

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

ROBERT E. DEMIL,

Plaintiff,

vs.

Case No. 2013-4291-CB

MICHEAL DEMIL and CRAIG
FENTON

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's November 24, 2014 Opinion and Order denying Plaintiff's motion for summary disposition and denying, in part, and granting, in part, Defendant's motion for summary disposition.

In the interests of judicial economy the factual and procedural statements set forth in the Court's November 24, 2014 Opinion and Order are herein incorporated.

Standard of Review

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). 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. MCR 2.119(F)(3). 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. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on

appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Arguments and Analysis

In his motion, Plaintiff first contends that the Court erred in holding that paragraph 3 of the Capitalization Agreement unambiguously provides that decisions regarding increasing the amount of authorized shares beyond 10,000 must be made unanimously, but that the condition does not apply to decisions to issue additional shares that have already been authorized. In support of his position, Plaintiff contends that the parties' intent could not possibly be to only require unanimous consent once the 10,000 share ceiling is reached. However, if contract language is unambiguous the Court must construe and enforce the contract as written. *Quality Prods & Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 375; 666 NW2d 251 (2003). Therefore, an unambiguous contractual provision is reflective of the parties' intent as a matter of law, and that intent will be enforced unless it is contrary to public policy. *Id.* Indeed, "[t]he goal of contract interpretation is to read the document as a whole and apply the plain language used in order to honor the intent of the parties." *Greenville Lafayette, LLC v Elgin State Bank*, 296 Mich App 284, 291; 818 NW2d 460 (2012). Accordingly, because the language is unambiguous, the Court may not delve into what the intent of the parties was at the time they adopted the Capitalization Agreement. Consequently, the Court did not err in failing to determine the intent of the parties with respect to paragraph 3.

Plaintiff also contends that the Capitalization Agreement must be ambiguous if the voting agreement is ambiguous. However, Plaintiff has failed to provide any authority in support of its conclusory statement. Rather, Plaintiff revisits his intent argument. Consequently, the Court is convinced that, for the reasons discussed above, Plaintiff's position is without merit.

Next, Plaintiff asserts that if the Court remains convinced that unanimous consent was not needed under the Capitalization Agreement in order to issue additional shares of the 9,700 shares that had previously been authorized but not issued, then his claims should have been dismissed in their entirety.

Plaintiff's complaint in this matter alleges that Defendants breached the Voting Agreement by: (1) Purporting to amend the nonexistent Bylaws of the Company to provide that majority vote of shareholders is sufficient for shareholders to act, and (2) By seeking to implement a plan to issue additional stock in the Company at an arbitrary price, without consulting with and/or acting jointly with Plaintiff, and without submitting the question in disagreement to arbitration. (*See* Complaint, at ¶27.) In addition, in his complaint, Plaintiff alleges that Defendants breached the terms of the Capitalization Agreement by authorizing for issuance an additional 2,000 shares in the Company without obtaining unanimous consent of each shareholder." (*See* Complaint, at ¶28.) Accordingly, the Plaintiff's breach of contract claim as to the Voting Agreement purports to have 2 bases: (1) Defendants' amendment of the bylaws without unanimous consent and (2) Defendants' implementing a plan to issue additional stock. In comparison, Plaintiff's breach of contract claim with respect to the Capitalization Agreement has only one basis: Defendants' authorization of an additional 2,000 shares without obtaining

unanimous consent. Accordingly, while the Court granted Defendants summary disposition of Plaintiff's claims to the extent based on the decision to issue additional shares, Plaintiff's claim still exists with respect to Defendants' decision to amend the bylaws. Consequently, the Court's decision did not dispose of all of Plaintiff's claims.

Finally, Plaintiff contends that the Voting Agreement is not ambiguous. However, the Court remains convinced that, for the reasons set forth in the November 24, 2014 Opinion and Order, that the Voting Agreement is ambiguous.

Conclusion

Based upon the reasons set forth above, Plaintiff Robert E. Demil's motion for reconsideration of the Court's November 24, 2014 Opinion and Order is DENIED.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: December 26, 2014

JCF/sr

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