

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

ROGER SOULLIERE, SOULLIERE  
DECORATIVE STONE, INC., MICHIGAN  
SKID LOADER, INC., STONE CITY, INC.,  
SOULLIERE'S STONE CITY, INC.,  
SOULLIERE WALL STONE, INC.,  
SOULLIERE LEASING, LLC, and  
SOULLIERE REALTY, LLC,

Plaintiffs,

vs.

Case No. 2013-1334-CB

FRANK BERGER, DSSC HOLDINGS, LLC,  
DSSC REALTY, LLC, STONESCAP  
SUPPLY, LLC, MACOMB SKID LOADER, LLC,  
LYRIC TECHNOLOGY, LLC, DAWN SURMA,  
MATTHEW ESCH, TIM SHEA, JAMES RISNER,  
NICHOLAS MAIORIANA, BRIAN ROBERTS,  
DAVID ATKINSON, and CAROL ANN  
SOULLIERE-KRAFT,

Defendants.

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OPINION AND ORDER

Plaintiffs have filed a motion for reconsideration of the Court's February 2, 2016  
Opinion and Order.

In the interests of judicial economy the factual and procedural statements set  
forth in the Court's February 2, 2016 Opinion and Order are herein incorporated.

I. 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 grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

Defendants have filed two motions for partial summary disposition pursuant to MCR 2.116(C)(8) and (10). Plaintiffs have filed responses to both motions and request that the motions be denied.

In addition, Plaintiffs have also moved for summary disposition of "Defendants' counterclaim". Defendants have filed a response and request that the motion be denied.

## II. Arguments and Analysis

Plaintiffs' motion seeks reconsideration of two issues. First, Plaintiffs contend that the Court erred in dismissing Count VII, Destruction of Websites and Email Accounts. The Court's decision with respect to Count VII was based on Plaintiff's failure to explain the nature of claim they are attempted to bring in Count VII, and failure to cite to any common law or statute that they contend that Defendants have violated. In their instant motion, Plaintiffs cite to *Price v High Pointe Oil Co, Inc*, 493 Mich 238; 828 NW2d 660 (2013) in support of their position that they can recover the cost to repair the websites. In *Price*, the Court was presented with the question of whether a plaintiff may recover noneconomic damages in an action alleging the negligent destruction of property. While the Court in *Price* references "actions involving the negligent destruction of property", it does not recognize the existent of a tort separate from negligence and/or

conversion that operates in situations in which property is destroyed. In this case, Plaintiffs have stated a separate claim for conversion based on the websites in question. Further, Plaintiffs have not stated a claim for negligence or even made an allegation that any of Defendants' actions in allegedly destroying the websites were done negligently. Consequently, the Court remains convinced that Plaintiffs have failed to establish that Count VII states a claim that is separate from their conversion claim. As a result, the Court is satisfied the Plaintiffs' position is without merit.

Plaintiffs' second contention is that their breach of fiduciary duty claims against Defendant Berger and Defendant Carol Ann Soulliere-Kraft ("Defendant Soulliere-Kraft") are valid claims. Specifically, Plaintiffs contend that Defendant Berger and Defendant Soulliere-Kraft owed a duty to Plaintiffs not to use or disclose Plaintiffs' confidential information to third parties. In support of their position, Plaintiffs rely on *Follmer, Rudzewicz & Co., P.C. v Kosco*, 420 Mich 394; 362 NW2d 676 (1984). However, *Follmer* did not involve a claim for breach of fiduciary duty; rather, *Follmer* presented a situation in which a former employer sought to enforce a contractual provision barring the defendant from disclosing specific types of the plaintiff's confidential information. While the former employee in *Follmer* was found to have been precluded from disclosing the information in question, it was due to a contractual provision, not a separate fiduciary duty. Consequently, *Follmer* does not provide support for Plaintiffs' position. As Plaintiffs have fail to provide any other support for their position, Plaintiffs' contention must be denied.

### III. Conclusion

For the reasons discussed above, Plaintiffs' motion for reconsideration of the Court's February 2, 2016 Opinion and Order is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: MAR 01 2016

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge