

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

KANTGIAS FAMILY LIMITED PARTNERSHIP
a Michigan Limited Liability Partnership,

Plaintiff/Counter-defendant,

vs.

Case No. 2013-000171-CB

DAVID PASCOE,

Defendant/Counter-plaintiff,

and

DAVID PASCOE,

Third-party Plaintiff,

vs.

DIETECH NORTH AMERICA, L.L.C., a
Michigan Limited Liability Company, and
JOHN CHRISTOPHER KANTGIAS,

Third-party Defendants.

OPINION AND ORDER

Plaintiff/Counter-Defendant Kantgias Family Limited Partnership (“KFLP”) and Third-Party Defendants Dietech North America, LLC and John Christopher Kantgias (KFLP and Third-Party Defendants collectively as, “Movants”) have filed a motion for reconsideration of a portion of the Court’s February 24, 2014 Opinion and Order.

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

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 Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

In their instant motion, Movants contend that the Court erred in holding that Defendant's damages for the breaches related to the late distributions are limited to attorney fees. Specifically, Movants contend that Defendant is not entitled to attorney fees in connection with the late distributions. However, the Court, in its February 24, 2014 Opinion and Order, did not award Defendant attorney fees; Rather, the Court left the issue of attorney fees open, to be determined at a future date. While Movants may be correct in their assertion that Defendant is not entitled to attorney fees, the Court declines to rule on that issue at this time. Accordingly, Movants' instant motion is denied to the extent that they request the Court to hold that Defendant is not entitled to attorney fees.

Conclusion

For the reasons set forth above, Plaintiff/Counter-Defendant Kantgias Family Limited Partnership's and Third-Party Defendants Diotech North America, LLC and John Christopher Kantgias' motion for reconsideration of the Court's February 24, 2014 Opinion and Order is

GRANTED, IN PART, and DENIED, IN PART. Specifically, the Court holds that the issue of attorney fees in connection with Defendant's breach of contract claim remains open with respect to liability and amount. Defendant retains the burden of establishing that he is entitled to attorney fees, and if so, the amount of fees he is entitled to recover. Pursuant to MCR, 2.602(A)(3), this *Opinion and Order* does not resolve the last pending issue and does not close this case.

IT IS SO ORDERED.

John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: March 10, 2014

JCF/sr

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