STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs. Case No. 2013-3468-CK

RMD PROPERTIES, LTD,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's April 30, 2015 Opinion and Order denying, in part, his motion for reconsideration of the Court's April 7, 2015 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's April 7, 2015 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 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).

II. Arguments and Analysis

In his motion, Plaintiff asserts that this matter should be reopened in order to allow him to pursue his request for an accounting. However, Plaintiff concedes that he did not raise this issue in his initial motion or first motion for reconsideration.

The Court has the discretion to deny a motion for reconsideration when the moving party relies on arguments or legal theories that could have been raised prior to the judgment. *Charbeneau v Wayne Co Gen Hosp,* 158 Mich App 730, 733; 405 NW2d 151 (1987). In this case, Plaintiff could have raised the issue presented in his previous pleadings. However, Plaintiff failed to do so and as a result his contention is untimely. Consequently, the Court is convinced that Defendant's motion should be denied.

Moreover, the Court is convinced that an accounting is unnecessary. Defendant's assets have been sold, or are in the process of being sold. Moreover, Plaintiff now possesses the right to pursue any unpaid rental obligations Defendant is owed. Once the proceeds of the sales and possible action for unpaid rent are disbursed, the parties will have received their portion of the Defendant's value. Based on the circumstances in this case, the Court is satisfied that an accounting is unnecessary and that this matter should remain closed.

III. Conclusion

For the reasons discussed above, Plaintiff's motion for reconsideration is DENIED.

Pursuant to MCR 2.602(A)(3), the Court states this matter remains CLOSED.

IT IS SO ORDERED.

Date: JUN 10 2015

Kathryn A. Viviano

Hon. Kathryn A. Viviano, Circuit Court Judge

cc: Jonathan B. Eadie – Attorney for Plaintiff
Benjamin J. Aloia – Attorney for Plaintiff
Rogue Tyson – Attorney for Defendant
Lawrence M. Scott – Attorney for Defendant