

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs.

Case No. 2013-3468-CK

RMD PROPERTIES, LTD,

Defendant.

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's April 7, 2015 Opinion and Order denying his motion to order payment of rent, or in the alternative enter a judgment for possession.

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.

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).

Arguments and Analysis

In his motion, Plaintiff again revisits the issue as to what rental rate RMD Holdings must pay under the Lease. However, this issue has already been raised and addressed. 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 remains convinced that the Court is convinced that RMD Holdings is only liable to pay the \$59,000.00 rental rate. Consequently, the Court rejects Plaintiff's position as to this issue.

In addition, Plaintiff contends that this matter should remain open because there remains real property in Flint, MI that needs to be disposed of pursuant to the parties' prior agreement, with the proceeds distributed equally between himself and Robert Demil. In its November 12, 2014 Opinion and Order, the Court ordered that the Flint Property be auctioned, and that the parties were to either agree on the manner in which the property was to be auctioned or submit competing proposals no later than November 30, 2014. The Court, having not received any proposals from the parties concerning the Flint Property, was under the impression that the parties had agreed as to the manner in which the Flint Property was to be auctioned. However, in the event that this issue remains outstanding, the Court is convinced that it should be auctioned through the same auctioneers utilized in connection with the golf course at issue in case no. 13-5020-CK. After all expenses are paid, the remaining proceeds are to be split equally between Plaintiff and Robert Demil.

Finally, Plaintiff contends that there remains an issue as rent that RMD Holdings, Ltd. failed to pay to Defendant RMD Properties, Ltd. from February 2013 through May 2013. Specifically, in his complaint Plaintiff requests that a receiver be appointed to, *inter alia*, collect the market rate of rent from Defendant's tenants. However, rather than appoint a receiver to pursue any potential collection action against RMD Holdings, Ltd., the Court is convinced that the more economical and practical remedy is to order that Defendant's right to pursue a collection action against RMD Holdings, Ltd. be assigned to Plaintiff, and that Plaintiff be required to distribute half of any proceeds he recovers to Robert Demil after deducting costs and fees incurred.

Conclusion

For the reasons discussed above, Plaintiff's motion for reconsideration is GRANTED, IN PART, and DENIED, IN PART. RMD Holdings, Ltd. is only liable to pay the \$59,000.00 rental rate for the remainder of the current 1 year lease. Further, if the Flint Property has yet to be auctioned, it shall be auctioned through the same auctioneers utilized in connection with the golf course at issue in case no. 13-5020-CK. After all expenses are paid, the remaining proceeds are to be split equally between Plaintiff and Robert Demil. Finally, Defendant shall, within 14 days of this Opinion and Order, assign to Plaintiff its right to pursue any collection action against RMD Holdings, Ltd. for unpaid rent for the months from February 2013 to May 2013. Plaintiff shall distribute half of any proceeds he recovers in connection with such claims to Robert Demil after deducting costs and fees incurred.

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

IT IS SO ORDERED.

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

Dated: April 30, 2015

JCF/sr

Cc: *via e-mail only*

Jonathan B. Eadie, Attorney at Law, jbelaw@hotmail.com

Benjamin J. Aloia, Attorney at Law, aloia@aloiaandassociates.com

Rogue Tyson, Attorney at Law, rtyson@nationwidecos.com

Lawrence M. Scott, Attorney at Law, lscott@orlaw.com