

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL,

Plaintiff,

vs.

Case No. 2013-5020-CK

THE LINKS AT SMITH'S CREEK,

Defendant.

OPINION AND ORDER

Defendant has filed a motion for reconsideration of the Court's August 5, 2014 Opinion and Order addressing the sale of the golf course owned by Defendant, as well as the surrounding residential property and the operating company, Post & Mesh's assets, including the liquor license.

Standards 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 its motion, Defendant requests that the Court: (1) Determine the portion of Defendant's real property to which Keith Scott has no claim ("Excluded Portion"); (2) Establish a procedure for allocating the proceeds of the auction of the realty between the Excluded Portion and the remainder of Defendant's real property; (3) Determine that Keith Scott is entitled to 10% of the gross sale proceeds of the auction of the realty, less only the Excluded Portion; (4) Determine that Keith Scott is entitled to 10% of the net proceeds of the auction of Post & Mesh, Inc.'s ("Post & Mesh") assets; and (5) Determine that RMD Holdings, Ltd. is entitled to be repaid its loan of \$40,000.00 to Post & Mesh from the proceeds of the auction of Post & Mesh's assets.

What Defendant's motion boils down to is that it wants this Court to determine the rights of three non-parties to the proceeds of the auction. With respect to Post & Mesh, the Court recognizes that the sale will include some of Post & Mesh's assets, primarily its liquor license. As such, and due to the parties' inability to resolve their outstanding disputes as to which individuals and/or entities are entitled to what portion of the proceeds, the Court is convinced that Post & Mesh must be joined as a necessary party under MCR 2.205.

With respect to non-parties Keith Scott's and RMD Holdings Ltd.'s interests in the sale proceeds, the Court declines to determine the scope and value of either party's interest(s) in the sale. If either Mr. Scott or RMD wish to pursue their potential rights to a portion of the proceeds there are legal mechanisms by which they can protect their interests. However, the Court is

convinced that it is improper to unilaterally determine their rights in the course of litigation to which they are not parties. Consequently, Defendant's motion must be denied.

Conclusion

For the reasons discussed above, Defendant's motion for reconsideration of the Court's August 5, 2014 Opinion and Order is DENIED. In addition, Post & Mesh, Inc. must be joined as a necessary party pursuant to MCR 2.205 due to the fact that some of its assets are being sold in the auction to be held in connection with this matter. Due to the outstanding issues remaining before this Court, this matter must be RE-OPENED.

IT IS SO ORDERED.

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

Dated: November 12, 2014

JCF/sr

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