

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

EDWARD CASTLE, JR. and  
THE FILTER DEPOT, LLC,

Plaintiffs,

vs.

Case No. 2014-3568-CB

MARCIA SHOHAM, JONATHAN  
SHOHAM and MIDWEST AIR  
FILTER, INC.,

Defendants.

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OPINION AND ORDER

Plaintiffs have filed a motion for reconsideration of the Court's February 17, 2016 Opinion and Order denying Defendants' motion for reconsideration of the Court's January 21, 2016 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's January 21, 2016 Opinions and Orders 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).

## II. Arguments and Analysis

While Plaintiffs agree with the Court's denial of the Defendants' motion for reconsideration, they dispute the Court's observation that Plaintiff had not presented any evidence that there was an agreement to cap MAF's management fee at 2%. Specifically, Plaintiffs assert that they have presented five different types of evidence indicating an agreement of a 2% cap. First, Plaintiffs rely on handwritten notes that indicate a 2% fee. (See Plaintiffs' Exhibit B.) While then notes in question reference a 2% fee, the notes do not make any reference whatsoever that the fees were to be capped at that rate in the future, nor do the notes restrict the parties' general right to contract as they see fit. See *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). Consequently, the Court remains satisfied that the notes in question do not evidence a 2% cap on the management fee.

Next, Plaintiffs rely on the testimony of Cindy Lamain, MAF's previous in-house CPA. Specifically, Plaintiffs relies on Mr. Lamain's testimony that Mr. Castle and Mr. Down agreed on a 2% fee that that it had never changed between 1995 and 2015, and that Mr. Down told her that he and Mr. Castle had agreed to a 2% fee. (See Plaintiffs' Exhibits C and E.) While the testimony in question evidences that there was an agreement that Filter Depot would pay MAF a 2% management fee, the fact remains that the parties to the agreement, Filter Depot and MAF, retained the ability to amend that agreement if they elected to do so. Although Plaintiffs challenge the equity and fairness of the Shoham Defendants' decision, on behalf of both MAF and Filter Depot to raise the fee, the Court is convinced that the testimony in question does not evidence that the fee was capped at 2%

and could not be subsequently raised upon the agreement of MAF and Filter Depot.

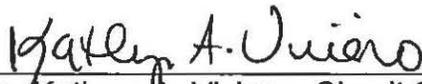
Plaintiffs' remaining evidence suffers from the same deficiencies. Specifically, Plaintiffs rely on Mr. Shoham's testimony that he does not remember an agreement to keep the fees at 2%, Filter Depot's past vice president and COO's testimony that there was an agreement to provide management services for a 2% fee, and an email that simply references that a percentage fee is the most equitable way to pay for the management services. (See Plaintiffs' Exhibits D, G and F.) While this evidence may indicate that there was an agreement to provide the services for a 2% fee, none of the evidence indicates that the parties could not amend that agreement, or that Mr. Castle's approval was needed in order for Filter Depot to approve such an amendment. Consequently, the Court remains convinced that Plaintiffs have failed to present any evidence that the management fee paid to MAF was to be capped at 2%, with no possible way of increasing the fee in the future. However, the Court also notes that the issue of whether the Shoham Defendants could approve an increase management fee without Mr. Castle's approval remains open. As a result, the Court is satisfied that Plaintiffs' motion for reconsideration must be denied.

### III. Conclusion

For the reasons discussed above, Plaintiffs' motion for reconsideration of the Court's February 17, 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: APR 22 2016

  
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Hon. Kathryn A. Viviano, Circuit Court Judge