

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.

OPINION AND ORDER

Defendants Marcia Shoham, Jonathan Shoman and Midwest Air Filter, Inc. (collectively, "Defendants") have filed a motion for reconsideration of the Court's January 21, 2015 Opinions and Orders.

In the interests of judicial economy the factual and procedural statements set forth in the Court's January 21, 2015 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

In their motion, Defendants contend that the Court erred in holding that a vote needed to be held prior to Defendants making a decision involving a conflict of interest. While Defendants do not contest that ¶6.1 of the Operating Agreement unambiguously requires any transaction involving a conflict of interest to be submitted to a vote of the members, they nevertheless aver that ¶6.4 allows MAF, as the majority shareholder, to unilaterally approve any action by a consent resolution, even if the action in question involves a conflict of interest. However, this position has already been addressed by the Court in its January 21, 2015 Opinion and Order issued in connection with Mr. Castle's motion for summary disposition of Count I of Filter Depot's complaint in case no. 2014-4186-CB. 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 has reviewed Defendants' argument and is not persuaded that its holding on this issue was in error.

Defendants also contend that they are entitled to summary disposition on the issue of whether unanimous approval was needed in order to alter the management fee. In his response, Plaintiffs assert that Plaintiff Castle and Ms. Shoham's father agreed to a 2% management fee, and that the fee would be capped at 2%. Further, Plaintiffs aver that paragraph 7.1 of the Operating Agreement requires decisions regarding the business and affairs of Filter Depot to be made by the members unanimously, not by unilateral action.

With respect to whether the 2% management fee was to be capped at 2%, Plaintiffs have failed to present any evidence of such a cap. Indeed, the only evidence presented is a handwritten document which makes reference to a 2% fee without any mention of that rate being capped. Parties are free to contract as they see fit. *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 51; 664 NW2d 776 (2003). In this case, MAF and Filter Depot, through MAF's unilateral action, agreed to increase the fee. While the Court has held that MAF could not approve of such a change on Filter Depot's behalf without a vote, the Court is satisfied that there was nothing barring Filter Depot and MAF from agreeing to increase the fee. Consequently, Plaintiffs' contention that the fee was capped at 2% is not properly supported and without merit.

Finally, with respect to Plaintiffs' position that paragraph 7.1 of the Operating Agreement requires certain decisions to be made unanimously, the Court is convinced that Plaintiffs' position is without merit. Paragraph 7.1 requires decision involving the ordinary business decision to be made by the members; however, ¶7.1 does not provide that decision must be approved unanimously. Indeed, ¶7.1 provides that such actions may be taken on the approval or consent of a majority of the shareholders. Although the Court has held that ¶6.1 of the Operating Agreement required the vote in question to be submitted to a vote due to the conflict of interest in implicated, Defendants' action did not violate ¶7.1 as that section does not require unanimous consent. As a result, Plaintiffs' position that unanimous consent was needed in order to amend the management fee rate is without merit.

III. Conclusion

For the reasons discussed above, Defendants' motion for reconsideration of the

Court's January 21, 2016 Opinions and Orders is DENIED. Further, the Court, for the reasons set forth above, hereby holds that Defendants' action in increasing the management fee did not violate ¶7.1 of the Operating Agreement, and that the management fee was not perpetually capped at 2%. 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: FEB 12 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge