

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

SARMAD BRIKHO, CHOICE AUTOMOTIVE
GROUP, LLC, d/b/a CHASE AUTOMOTIVE
LEASING,

Plaintiffs,

vs.

Case No. 2014-3977-CB

SHANT SHIRINIAN, SHIRINIAN INVESTMENTS,
LLC, VAN 8 COLLISION, INC., GARY
CUNNINGHAM, and GARY H. CUNNINGHAM,
P.C.

Defendants.

OPINION AND ORDER

Defendants Gary Cunningham and Gary H. Cunningham, P.C. (collectively, "Cunningham Defendants") have filed a motion for reconsideration of the Court's August 18, 2015 Opinion and Order.

In the interests of judicial economy the factual and procedural statements set forth in the Court's May 11, 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 its August 18, 2015 Opinion and Order, this Court addressed Plaintiff's motion for leave to amend his complaint. A trial court should freely grant leave to amend when justice so requires, but leave should be denied where amending the complaint would be futile. *Jenks v Brown*, 219 Mich App 415, 420; 557 NW2d 114 (1996). An amendment is futile where, ignoring the substantive merits of the claim, it is legally insufficient on its face. *McNees v Cedar Springs Stamping Co*, 184 Mich App 101, 103; 457 NW2d 68 (1990).

In the August 18, 2015 Opinion and Order, the Court examined Plaintiff's proposed amended complaint by determining whether Plaintiff's proposed claims were futile on their face. Ultimately, the Court found that Plaintiff's proposed breach of fiduciary duty and conspiracy claims were not deficient on their face, and that as a result Plaintiff's motion should be granted. In their instant motion, the Cunningham Defendants do not challenge the Court's finding that Plaintiff's proposed claims against them are not futile on their face; rather, the Cunningham Defendants merely complain that they were not given an opportunity to file a response to the original reconsideration motion, and challenge the substantive merits of Plaintiff's proposed claims by relying on Plaintiff's deposition testimony.

With respect to the Cunningham Defendants' complaint that they were not permitted to file a response, they have not provided any reason why allowing them to file a response would have altered the Court's analysis or changed the Court's decision. Consequently, the Cunningham Defendants' position does nothing more than confirm that the Court did not need a response from them in order to resolve the motion.

Finally, to the extent the Cunningham Defendant challenges the substantive merits of Plaintiff's proposed claims, their position is untimely. While there are avenues by which the substantive merits of Plaintiff's claims may be challenged, an argument that a proposed claim is futile is not one of them as the Court may not delve into the substance of a plaintiff's proposed claims when deciding whether to grant leave to file a proposed complaint. As a result, the Cunningham Defendants' position is without merit.

III. Conclusion

Based upon the reasons set forth above, the Cunningham Defendants' motion for reconsideration of the Court's August 18, 2015 Opinion and Order is DENIED.

In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: NOV 16 2015

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