

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 Shant Shirinian, Shirinian Investments, LLC, and Van 8 Collision (collectively, the "Shirinian 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 their instant motion, the Shirinian Defendants contend that the Court erred in allowing Plaintiff to amend his complaint to assert a claim for membership oppression. In support of their position, the Shirinian Defendants rely on various types of evidence in an effort to establish that Plaintiff's proposed claim has no factual merit. However, when determining whether an amendment is futile, a Court must base its determination on the face of the proposed amendment without looking at the substantive merits of the claim. *McNees*, 184 Mich App at 103. While Plaintiff claim may ultimately be found to be meritless

and even frivolous, any investigation into the facts underlying Plaintiff's claim at this time would be inappropriate and premature. Accordingly, the Shirinian Defendants' position is misplaced and untimely. Consequently, the Shirinian Defendants' motion must be denied.

III. Conclusion

Based upon the reasons set forth above, the Shirinian 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