

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

LEONARDO HARPER, LLC, a
Michigan Limited Liability Corporation,

Plaintiff,

vs.

Case No. 2014-805-C~~B~~

LANDMARK COMMERCIAL REAL
ESTATE SERVICES, Inc., a Michigan
Corporation, JOHN KELLO, and CLINTHARP,
LLC, a Michigan Limited Liability Company,

Defendant.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's May 27, 2015 Opinion and Order granting Defendants summary disposition pursuant to MCR 2.116(C)(10).

In the interests of judicial economy the factual and procedural statements set forth in the Court's May 27, 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 Ladbrooke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

II. Arguments and Analysis

In its motion, Plaintiff first contends that Defendant Kello was its agent in connection with attempted lease with FDS, and with the sale of real estate to Clintharp. However, both of those issues were raised, and address by the Court at length, in connection with the parties' initial motions. 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). Consequently, the Court will not revisit the agency questions previously addressed.

Next, Plaintiff contends that Defendant Kello had a duty to disclose his personal financial interest in the transactions as issue, even if he was not Plaintiff's agent. Specifically, Plaintiff asserts that brokers and their sales agents are required to disclose any personal interest that they may have in a real estate transaction. See *Greater Bloomfield v Braun*, 64 Mich App 128; 235 NW2d 168 (1975). However, unlike the facts presented in *Greater Bloomfield*, the real estate agent in this matter was not the agent for the party allegedly aggrieved by the agent's conduct. Indeed, the rule set forth in *Greater Bloomfield* was that the law will not permit an agent to act in manner in which his duties conflict with his personal interest. *Id.* at 135. In this case, while Defendant

Kello owed duties to FDS and Clintharp as their agent, the same cannot be said for Plaintiff. Accordingly, the Court is convinced that the holding in *Greater Bloomfield* does not form a basis for any of Plaintiff's claims.

Next, Plaintiff asserts that Defendant Kello's actions violated the Michigan Occupational Code, MCL 339.601 et. Seq., and the Real Estate Broker's Act ("REBLA"). However, this specific argument was not advanced in connection with Plaintiff's original motions, responses, or replies. The Court has discretion to deny a motion for reconsideration when the moving party relies on arguments or legal theories that could have been raised prior to the judgment. *Charbeneau v Wayne Co Gen Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Based on Plaintiff's failure to make this argument in a timely manner, or cite to the statutes in question in its complaint, the Court is convinced that Plaintiff's position is untimely, is improper, and must be denied.

IV. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for reconsideration is DENIED. Pursuant to MCR 2.602(A)(3), this matter remains CLOSED.

IT IS SO ORDERED.

Date: SEP 10 2015

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