

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

CLEANING ABOVE AND  
BEYOND, LLC,

Plaintiff,

vs.

Case No. 2015-1289-CB

JEFFERSON YACHT CLUB,  
WILLIAM MILLER, JEFFREY  
WEISHAAR, SUSAN  
VANSTEELANDT, JOSEPH  
LEFEVER and KENNETH  
BLONDELL,

Defendants.

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OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's August 3, 2015 Opinion and Order transferring this matter to the 40<sup>th</sup> district court based on this Court's lack of subject matter jurisdiction.

In addition, Defendants have filed a motion for costs and attorney fees pursuant to MCR 2.227(A)(2). Plaintiff opposes the motion and requests that it be denied.

In the interests of judicial economy the factual and procedural statements set forth in the Court's Aug 3, 2015 Opinion and Order are herein incorporated.

I. Plaintiff's Motion for Reconsideration

A. 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).

#### B. Arguments and Analysis

In its motion, Plaintiff contends that its damages are not speculative in light of the Michigan Court of Appeals' decision in *Health Call v Atrium Home & Health Care*, 268 Mich App 83; 706 NW2d 843 (2005). In *Health Call*, the Michigan Court of Appeals held that there is no blanket rule limiting recovery to nominal damages as a matter of law in all actions arising out of, or related to, the termination of at-will contracts. *Id.* at 106. In *Health Call*, the defendant interfered with the plaintiff's employment relationship with certain nurses, as well as its contract with one of its clients that the two nurses had been assisting. Specifically, the defendant hired the two nurses away and persuaded the client to terminate its contract with plaintiff and enter into a contract for the same services with defendant based on the client's fondness for the nurses that had switched employers. The Court in *Health Call* held that where a plaintiff could present documentary evidence that the party who terminated the at-will contract was satisfied with the plaintiff's performance and would have continued the contract indefinitely but for the interference the damages are not speculative. *Id.* at 103. However, the Court

also noted that “[i]t will likely be the rare case that parallels the factual situation here.”  
*Id.*

In this case, unlike *Health Call*, Plaintiff has failed to present any evidence that JYC was satisfied with its performance or that the automatic renewal provision would have been triggered but for the alleged interference. Moreover, Plaintiff has not presented the Court with evidence that there was any interference in the first place. Based on Plaintiff's failure to establish the elements of its claim, and the fact that the facts presented in this case are easily distinguishable from the unique facts presented in *Health Call*, the Court is convinced that Plaintiff's contention that the decision in *Health Call* requires the Court to reconsider the August 3, 2015 Opinion and Order is without merit.

## II. Defendants' Motion for Costs and Attorney Fees, MCR 2.227(A)(2) and Motion for Reconsideration

In their motion for costs and attorney fees, Defendants contend that the Court must order Plaintiff to pay its attorney fees and costs pursuant to MCR 2.227(A)(2).

MCR 2.227(A)(2) provides:

(2) As a condition of transfer, the court shall require the plaintiff to pay the statutory filing fee applicable to the court to which the action is to be transferred, and to pay reasonable compensation for the defendant's expense, including reasonable attorney fees, in attending the wrong court.

However, while the Court recognizes that MCR 2.227(A)(2) ordinarily provides for attorney fees and costs in a case where the matter is transferred to the district court, this Court is convinced that Defendants are not entitled to attorney fees and costs pursuant to MCR 2.227(A)(2) based on their failure to properly support their request in their original motion. Moreover, the request was not substantiated with any billing records or list of costs. While Defendants have now substantiated their request by filing

a separate motion after the case has been closed, Defendants' motion is untimely and will be denied. However, Plaintiff is required to pay the statutory filing fee applicable within 28 days of the date of this Opinion and Order.

Finally, while the Court notes that Defendants filed an amended brief to their original motion in which they more fully addressed their request for attorney fees and costs, they were not authorized to file an amended brief. Although MCR 2.118 permits parties to file amended pleadings in certain situations, a motion is not a "pleading" as it is defined by MCR 2.110. Specifically, MCR 2.110 defines "pleading" as including only complaints, cross-claims, counterclaims, third party complaints, answers to complaints, cross-claims, counterclaims or third-party complaints, and replies to answers. Accordingly, motions are not pleadings, and therefore may not be amended without leave of the court. Based on its unauthorized filing, the Court hereby strikes Defendant's amended brief to its motion for summary disposition.

### III. Conclusion

For the reasons set forth above, Plaintiff's motion for reconsideration of the Court's August 3, 2015 Opinion and Order is DENIED. In addition, Defendants' motion for attorney fees and costs is DENIED, except that Plaintiff is required to pay the statutory filing fee applicable within 28 days of the date of this Opinion and Order. Pursuant to MCR 2.602(A)(3), this matter remains CLOSED.

IT IS SO ORDERED.

Date: NOV 04 2015

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