

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

C&H VENTURES, LLC,

Plaintiff,

vs.

Case No. 2015-1457-CB

ELI'S CONEY ISLAND, LLC and
AHMAD NABIH ZAHR,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's December 10, 2015 Opinion and Order granting Plaintiff's motion for summary disposition as to liability but denying Plaintiff's request for damages without prejudice.

In the interests of judicial economy the factual and procedural statements set forth in the Court's December 10, 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 motion, Plaintiff contends that the Court erred by denying its request for a judgment in the sum of \$83,111.02. Specifically, Plaintiff asserts that its request for damages was supported by an affidavit it filed on October 20, 2015, 11 days after it filed its original motion for summary disposition and the day after Defendant filed its response. The contents of the affidavit were not addressed in the motion or at the hearing held in connection with the motion. Rather, the affidavit was filed but not referenced or relied upon at any time up until the filing of the instant motion for reconsideration.

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 failure to file the affidavit in a timely manner and its failure to reference or rely upon the affidavit in its motion or at the hearing, the Court is convinced that Plaintiff's motion must be denied, and that Plaintiff must be left to establish its damages by filing a separate motion that will allow Defendant an opportunity to respond to all arguments and materials raised in support of the request.

III. Conclusion

Based upon the reasons set forth above, Plaintiff's motion for reconsideration of the Court's December 10, 2015 Opinion and Order is DENIED. In compliance with MCR 2.602(A)(3), this Opinion and Order neither resolves the last claim nor closes the case.

IT IS SO ORDERED.

Date: JAN 15 2016

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