

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

PLUS CONCRETE, INC.,

Plaintiff,

vs.

Case No. 2015-1621-CB

RMD HOLDINGS, LTD (a/k/a  
NATIONWIDE CONSTRUCTION  
GROUP) and ROBERT DEMIL,

Defendants.

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OPINION AND ORDER

Defendants have filed a motion for reconsideration of the Court's August 28, 2015 Opinion and Order disqualifying their counsel Lawrence M. Scott ("Mr. Scott") and O'Reilly Rancilio, P.C ("O'Reilly").

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 their motion, Defendants contend that Plaintiff's position that Defendant Demil breached his fiduciary duty as a shareholder and treasurer of Plaintiff by retaining Mr. Scott and O'Reilly without obtaining the requisite approval of Plaintiff's remaining shareholders/board of directors has been abandoned.<sup>1</sup> However, even if Plaintiff has conceded that Defendant Demil had the authority to retain O'Reilly and Mr. Scott, that fact does not end the Court's inquiry and does not require the Court to reconsider its prior ruling.

Plaintiff's motion for disqualification was based not only on Defendant Demil's retention of O'Reilly and Mr. Scott; rather, Plaintiff's motion was also based on its allegation that Defendant Demil breached his fiduciary duty to Plaintiff by utilizing O'Reilly/Mr. Scott representation to further his personal agenda rather than to act in Plaintiff's best interests. Specifically, Plaintiff avers that Defendant Demil instructed O'Reilly/Mr. Scott to investigate Placido Corral's use of Plaintiff's equipment, labor, and/or materials, and made decisions regarding the windup of Plaintiff's operations without the requisite approval of his fellow shareholder/directors. These actions are evidenced by a February 23,

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<sup>1</sup>On September 4, 2015, Plaintiff's counsel sent a letter to the Court requesting permission to file a response to the instant motion rather than seeking leave by motion. In addition to being an inappropriate procedure in which to seek such leave, the Court declines such permission and will not consider the contents of the letter in connection with its analysis of Defendants' instant motion for reconsideration. MCR 2.119(F)(2).

2015 letter Mr. Scott sent to Mr. Corral regarding the investigation of his activities (See Plaintiff's Exhibit C.), as well as a letter sent by Benjamin Aloia, Esq. on behalf of Michael Demil and Placido Corral to Mr. Scott in which he states that Defendant Demil has made various decisions without the required consent of his fellow shareholders/directors. (See Plaintiff's Exhibit D.)

In their motion, Defendants do not contest that a portion of Plaintiff's breach of fiduciary duty claim is based on Defendant Demil's interaction with O'Reilly/Mr. Scott while O'Reilly/Mr. Scott were representing Plaintiff. MRPC 1.9(a) provides that "a lawyer who has previously represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter..." In this case, Plaintiff's breach of fiduciary duty claim is substantially related, and in fact is centered, on Defendant Demil's instructions to O'Reilly/Mr. Scott at the time they were retained to represent Plaintiff. Accordingly, the Court is convinced that MRPC 1.9(a) requires the Court to disqualify Mr. Scott from representing Defendants in this matter. Moreover, O'Reilly must also be disqualified under MRPC 1.10(a). MRPC 1.10(a) provides that "while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules....1.9....." In this case, the Court has determined that Mr. Scott may not represent Defendants. Consequently, O'Reilly must also be precluded from representing Defendants pursuant to MRPC 1.10(a).

### III. Conclusion

Based upon the reasons set forth above, Defendants' motion for

reconsideration of the Court's August 28, 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 either of the cases.

IT IS SO ORDERED.

Date: SEP 09 2015

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