

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

JOHN MICHAEL JONES and  
OUTBACK PROPERTY  
MANAGEMENT, LLC,

Plaintiffs,

Case No. 2015-1987-CB

vs.

WESTMINSTER, LLC and  
LEONARDO ROBERTS,

Defendants.

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OPINION AND ORDER

Plaintiffs have filed a motion for reconsideration of the Court's ~~May 25, 2016~~ Opinion and Order.

I. Factual and Procedural History

Plaintiff John Michael Jones ("Plaintiff Jones") is a licensed realtor and broker in the State of Michigan. Plaintiff Jones is also a member and manager of Plaintiff Outback Property Management, LLC ("Plaintiff Outback"). On or about July 1, 2010, Plaintiff Jones and Defendants entered into a contract entitled "Global Release of All Claims" ("GRC") pursuant to which, *inter alia*, Defendants agreed not to institute any action against Plaintiffs or file any complaints with any governmental agency or professional boards. (See Defendants' Exhibit A.)

In 2013, Plaintiffs filed a lawsuit against Defendants in the Macomb County Circuit Court, case no. 2013-627-CK ("First Case"). In the First Case, Plaintiffs alleged that Defendants breached the terms of the GRC by initiating Michigan Department of

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Licensing and Regulatory Affairs ("LARA") complaints against Plaintiff Outback. The First Case was ultimately resolved after the Court conducted an evidentiary hearing and entered an Order holding:

The Court has determined that the LARA complaint filed by Defendants against Outback Property Management, LLC, necessitating a complaint to be filed against [Plaintiff Jones] which in so doing violating the [GRC]. Judgment shall enter in favor of the [Plaintiff Outback] in the amount of \$15,618.95.

(See Defendants' Exhibit C.)

Plaintiff's judgment in connection with the First Case was subsequently satisfied. (See Defendants' Exhibit D.) In addition to granting Plaintiffs a judgment for the damages caused by Defendants' breach of the GRC, the Court entered an order requiring Defendants to "seek withdrawal of the [LARA] complaint, filed by them, against Plaintiff John Jones only, from the Michigan Department of Regulatory Affairs...". (See October 7, 2013 Order entered in the First Case.)

On December 20, 2015, Plaintiffs filed their amended complaint in this matter ("Complaint"). Among the various allegations within the Complaint, Plaintiffs allege that Defendants have not complied with the October 7, 2013 Order entered in the First Case, and that they have continued to suffer damages as a result of Defendants breach of the GRC. The Complaint contains several claims, including a claim for breach of contract based on Defendants alleged breaches of the GRC (Count II).

On March 15, 2016, Plaintiffs filed a motion for partial summary disposition in which they sought summary disposition of Count II. Defendants subsequently filed a response and requested that the motion be denied. On April 4, 2016, the Court held a hearing in connection with the motion and took the matter under advisement. On May 25, 2016, the

Court entered its Opinion and Order denying Plaintiffs' motion and granting Defendants' request for summary disposition pursuant to MCR 2.116(I)(2). On June 14, 2016, Plaintiffs filed their instant motion for reconsideration of the Court's May 25, 2016, Opinion and Order.

## II. 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 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).

## III. Arguments and Analysis

In their motion, Plaintiffs contend that the Court erred in holding that res judicata bars Count II of the Complaint. Specifically, Plaintiffs aver that their claim is not barred by res judicata because the damages at issue were speculative at the time of the First Case. In support of their position, Plaintiffs rely on *Said v Rouge Steel Co*, 209 Mich App 150, 159-160; 530 NW2d 765 (1995), *Plaza Investment Co v Abel*, 8 Mich App 19; 153 NW2d 379 (1967) and *Dubuc v Green Oak Tp*, 312 F3d 736 (2002).

In *Said*, the plaintiff was a seaman that was injured aboard a vessel. In 1987 the seaman filed a claim for maintenance and cure against the vessel's owner/operator. After resolving the initial matter via case evaluation, in 1991 the plaintiff filed another claim for

maintenance and cure. On appeal, the Michigan Court of Appeals held that the second suit was not barred by res judicata because the duty to provide maintenance and cure as needed to the point of maximum recovery is a continuing one. *Id.* at 159.

In *Plaza*, the plaintiff was a landlord who had a continuing duty to, after receiving notice from the tenant, to keep the roof in good order and repair. In 1962, the defendant tenant discovered water damage and notified the previous owner, who made some repairs. In spring 1963 water once again leaked from the roof. The defendant again notified the owner of the condition, but the owner did not adequately remedy the problem. In May 1963 the plaintiff purchased the property. In June 1963 the defendant vacated the premises. Plaintiff then sued defendant for damages and defendant counter-sued for the damaged cause by the water that had leaked. In deciding that res judicata did not bar the defendant's counter-claims, the Court noted that "[a] covenant to keep in repair throughout the term of the lease is capable of constant or continuous breach and, thus, the fact that damages have been recovered for a breach of such a covenant will not bar a second suit suffered from the continuing breach since the last recovery." *Plaza*, 8 Mich App at 27.

Finally, Plaintiffs rely on the dissenting opinion of Judge Moore in *Dubuc* in which she recognized, in citing to *Said and Burroughs v Lake Arrowhead Prop Owners Ass'n*, unpublished per curiam opinion of the Court of Appeals, decided March 16, 2001 (Docket No. 221511), that Michigan courts have held that repeated violations of a continuous duty may form the basis for multiple suits.

The Court has reviewed the three cases Plaintiffs have cited and is satisfied that they can all be distinguished based on the reasoning set forth by the Michigan Court of

Appeals in *M-59 Joy, LLC v Beninati Contracting Services, Inc.*, unpublished per curiam opinion of the Court of Appeals, decided April 19, 2011 [Docket No. 298310]. In *M-59*, the Court rejected the plaintiff's argument that the defendant had a continuing duty to perform. Specifically, the Court differentiated between situations in which a party repeatedly breaches a continuing duty and those situations in which damages continue to flow from a single breach of duty that was the basis for the first suit. The Court held that a continuing wrong that can form the basis for multiple suits is established by continuing wrongful acts, not by continual harmful effects from a completed act. *Id.* at 2, citing *Jackson Co Hog Producers, v Consumers Power Co*, 234 Mich App 72, 83; 592 NW2d 112 (1999); *Terlecki v Stewart*, 278 Mich App 644, 655-657; 754 NW2d 899 (2008).

In this case, Plaintiffs seeks to recover additional damages caused by the same breach at issue in the First Case, not to recover damages caused by an additional breach of a continuing duty. Consequently, the Court remains satisfied that in this case Plaintiffs' count II is barred by res judicata as, unlike the situations presented in the cases cited by Plaintiffs in which a repeated breaches of a continuing duty were present, Plaintiffs claim merely seeks to recover additional damages stemming from the same breach at issue in the First Case.

#### IV. Conclusion

Based on the foregoing, Plaintiffs' motion for reconsideration of the Court's May 25, 2016 Opinion and Order is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last pending claim nor closes the case.

IT IS SO ORDERED.

Date: AUG 03 2016

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