

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

NORTH ROSE TOWNE HOUSES  
IMPROVEMENT ASSOCIATION, INC.,

Plaintiff,

vs.

Case No. 2015-2445-CB

LISA MASTROGIOVANNI,

Defendant.

---

OPINION AND ORDER

Plaintiff has filed a motion for reconsideration of the Court's December 7, 2015 Order setting aside the default previously entered against Defendant.

I. Factual and Procedural History

Defendant is one of Plaintiff's former board members. Plaintiff is a homeowners association formed to provide centralized control and support for the residents of the North Rose Townhouses.

On August 19, 2015, Plaintiff filed its complaint in this matter against Defendant ("Complaint"). In the Complaint, Plaintiff purports to state the following claims: Count I- Breach of Fiduciary Duty, Count II- Misrepresentation, and Count III- Injunctive Relief.

On September 16, 2015, Plaintiff filed its proof of service with respect to the complaint. On October 22, 2015, a default was entered by the Court against Defendant. On November 20, 2015, a motion to set aside default was filed by Defendant. On December 7, 2015, a hearing was held in connection with the motion. At the conclusion of the hearing, the Court entered an Order setting aside the default and denying Plaintiff's

request for costs and attorney fees. On December 28, 2015, Plaintiff filed its instant motion for reconsideration of the December 7, 2015 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 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).

## III. Arguments and Analysis

In its motion, Plaintiff first contends that Defendant only had 21 days to set aside the default after it was entered, and that Defendant's motion was untimely because it was not filed within that timeframe. MCR 2.603(D)(2) provides that a default may be set aside if the motion is filed either (1) before entry of a default judgment or (2) within 21 days of the entry of a default judgment. In this case, it is undisputed that Defendant's motion to set aside default was filed prior to the entry of a default judgment. Consequently, Plaintiff's contention that Defendant's motion was untimely is without merit.

Next, Plaintiff challenges that merits of Defendant's motion. However, the merits of the motion were already raised and addressed during the December 7, 2015 hearing. 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). Accordingly, Plaintiff's attack of the merits of Defendant's motion is not a basis for reconsideration of the December 7, 2015 Order.

Finally, Plaintiff contends that MCR 2.603(D)(4) requires the Court to award it all of the attorney fees and costs incurred in reliance of the default. While MCR 2.603(D)(4) requires a Court to condition an order setting aside a default on the defaulted party paying the taxable costs incurred by the other party in reliance on the default, the Court rule merely permits, rather than requires, a Court to award attorney fees. In this case, while Defendant has listed three types of costs it seeks to recover (See Plaintiff's Exhibit 3), it has failed to establish that any of the costs in question were incurred in reliance on the default. As a result, Plaintiff has failed to meet its burden in seeking taxable costs pursuant to MCR 2.603(D)(4). As a result, Plaintiff's request for attorney fees and costs remains properly denied.

#### Conclusion

For the reasons discussed above, Plaintiff's motion for reconsideration of the Court's December 7, 2015 Order is DENIED. Pursuant to MCR 2.602(A)(3), the Court states 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