

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

ABRO & JARBO, LLC, a Michigan limited liability company, ABRO & JARBO 2, LLC, a Michigan limited liability company, A & J MANAGEMENT SERVICES, LLC, a Michigan limited liability company, SUNRISE CAPITAL, LLC, a Michigan limited liability company, CAPITAL INVESTMENTS OF KALAMAZOO, a Michigan limited liability company, and KALAMAZOO TOBACCO, LLC, a Michigan limited liability company, and OWOSSO TOBACCO, LLC a Michigan limited liability company, and GRAND RAPIDS EQUITY INVESTMENTS, LLC, a Michigan limited liability company, and 1820 28th STREET, LLC, a Michigan limited liability company, and TOBACCO SHOPPE MANAGEMENT LLC, a Michigan limited liability company, and KALAMAZOO MAIN STREET, LLC, a Michigan limited liability company, and FREEDOM DISTRIBUTION, INC, a Michigan corporation, GHANIM ABRO aka MIKE ABRO, and FATIN ABRO,

Plaintiffs,

vs.

Case No. 15-3192-CB

RANDY JARBO, FAWAZ JARBO,
JAMES JARBO, RONNIE JARBO,
JHAZWAN YOUSIF, STAVIER JARBO,
and PIERRE JARBO,

Defendants/Counter-Plaintiffs,

OPINION AND ORDER

vs.

FREEDOM DISTRIBUTION, INC, a Michigan corporation, GHANIM ABRO aka MIKE ABRO, and FATIN ABRO,

Counter-Defendants,

FILED
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CLERK OF COURT
MACOMB COUNTY
MICHIGAN

vs.

SUNRISE CAPITAL, LLC,

Cross/Third-Party Plaintiff,

vs.

SHELBY TWP TOBACCO, LLC, a Michigan
limited liability company, and GHANIM
ABRO aka MIKE ABRO

Third-Party Defendants and
Cross-Defendants

vs.

WILD BILLS TOBACCO OF OWOSSO II,
LLC, a Michigan limited liability company,
WILD BILLS TOBACCO OF JACKSON III,
LLC, a Michigan limited liability company,
WILD BILLS TOBACCO OF KALAMAZOO
III, LLC, a Michigan limited liability company,
and BATTLE CREEK HOLDINGS, LLC, a
Michigan limited liability company,

Intervening Plaintiffs,

ABRO v JARBO, LLC, a Michigan limited
liability company, OWOSSO TOBACCO,
LLC, a Michigan limited liability company,
CAPITAL INVESTMENTS OF KALAMAZOO,
a Michigan limited liability company, and
A & J MANAGEMENT SERVICES, LLC,
a Michigan limited liability company,

Defendants.

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OPINION AND ORDER

This matter is before the Court on intervening plaintiffs' motion for reconsideration of the Court's *Opinion and Order* dated June 16, 2016, pursuant to MCR 2.119(F)(3).

I. Factual and Procedural Background

The facts of this case were previously discussed in the *Opinion and Order* dated June 16, 2016, but the Court shall reiterate the pertinent procedural background. On January 30, 2016, Wild Bills Tobacco¹ intervened in this action to obtain a declaration regarding the enforceability of the contingent lease agreements between Wild Bills Tobacco and the landlords. On April 25, 2016, receiver and plaintiffs filed motions for summary disposition as to the validity of these contingent lease agreements. The Court granted receiver's and plaintiff's motions for summary disposition on June 16, 2016. On July 7, 2016, Wild Bills Tobacco filed the instant motion for reconsideration.

II. Standard of Review

A motion for rehearing or reconsideration must be filed and served no later than 21 days after entry of the Order. MCR 2.119(F). 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). A court's decision to grant a motion for reconsideration is an exercise of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658; 617 NW2d 368 (2000). As such, "the moving party must demonstrate palpable error by which the court and the parties have been misled and show different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). A motion for reconsideration that "merely presents the same issues ruled upon by the court, either expressly or by reasonable implication, will not be granted." *Id.*

¹ Consistent with the Court's *Opinion and Order* dated June 16, 2016, the Court shall collectively refer to intervening plaintiffs as "Wild Bills Tobacco."

However, courts are “permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court.” *Hill v City of Warren*, 276 Mich App 299, 307; 740 NW2d 706 (2007). The trial court does not abuse its discretion “in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court’s original order.” See, e.g., *Chareneau v Wayne Co Gen Hospital*, 158 Mich App 730, 733; 405 NW2d 151 (1987).

III. Arguments and Analysis

Wild Bills Tobacco first contends that the Battle Creek purchase agreement should not have been voided as it not within the receivership estate. However, this position is contrary to the *Supplemental Receivership Order*, which expressly included A & J Management Services, LLC (the Battle Creek property), within the receivership estate. See *Supplemental Receivership Order* at 3. A & J Management Services, LLC, was “formed for the purpose of owning and managing a business known as ‘The Tobacco Shoppe’ located in Battle Creek, Michigan.” See Plaintiffs Complaint at 6; Defendants’ Answer to Plaintiff’s Complaint at 6; Defendant’s Amended Answer to Plaintiff’s Complaint at 6. The *Supplemental Receivership Order* stated that the companies within the receivership estate “are directed to cooperate with receiver in the transition of the management of the Assets and shall make immediately available to receiver all of the following pertaining to the Assets,” including “(g) [l]eases and rental agreements.” See *Supplemental Receivership Order* at 4-5. By extension the *Supplemental Receivership Order* necessarily included the “Assets” of A & J Management Services, LLC. Therefore, the purchase agreement of the Battle Creek property clearly interfered with the “Assets” under control of the receivership estate, in violation of the receiver’s authority to “[e]nforce, terminate

or approve and contracts and/or agreements regarding the Assets.” *Id.* at 6. Accordingly, the Court did not err when it voided the Battle Creek purchase agreement.

Next, Wild Bills Tobacco argues that the Court based its decision on a mistaken belief that the receivership estate includes the contingent lease agreements. The Court’s decision was not, and is not, based on that premise. For the reasons discussed on page 8 of the June 16, 2016 *Opinion and Order*, the Court remains convinced that the existing leases between the tenant companies and the landlords to the properties at issue are part of the receivership estates’ “Assets” as defined by the *Supplemental Receivership Order*. As those leases are a part of the receivership estate, Wild Bills Tobacco interfered with the *Supplemental Receivership Order’s* prohibition against “directly or indirectly transferring . . . diminishing or causing harm to any of the Assets” by entering into the contingent lease agreements after the appointment of the receiver. See *Supplemental Receivership Order* at 7. Additionally, Wild Bills Tobacco violated section 12(d) of the *Supplemental Receivership Order*, which prohibits any person or entity from “[d]oing any act or thing to interfere with Receiver taking control, possession or management of the Receivership Property, or to in any way interfere with Receiver or the duties of Receiver, or to interfere with the exclusive jurisdiction of the Court over the Assets.” *Id.* at 7-8.

With regard to Wild Bill Tobacco’s remaining arguments regarding its violation of the injunction and its interference with the “status quo,” Wild Bills Tobacco’s motion for reconsideration “merely presents the same issues ruled upon by the Court, either expressly or by reasonable implication,” and is thus denied. See MCR 2.119(F)(3). After a thorough review of the instant motion and the Court’s original *Opinion and Order*, Wild Bills Tobacco has failed to demonstrate “palpable error” by which the Court has been “misled.” *Id.* Therefore, Wild Bills Tobacco’s motion for reconsideration must be denied.

IV. Conclusion

For the reasons set forth above, Wild Bills Tobacco's motion for reconsideration is DENIED. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.



RICHARD L. CARETTI
Circuit Court Judge

Dated: September 1, 2016

cc: Eric D. Scheible, Attorney for Plaintiffs
Joseph E. Viviano, Attorney for Defendants
Lawrence M. Scott, Attorney for Intervening Plaintiffs
Michael D. Almassian, Court Appointed