

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

GAIL A. HERTZ and
SUSAN M. HERTZ,

Plaintiffs/Counter-Defendants,

vs.

Case No. 2015-798-CB

ABLE TOWING, LLC,
WAYNE'S SERVICE, INC.,
EDWARD D. HERTZ, DENNIS
HERTZ, and BRUCE HERTZ,

Defendants,

and

SERVICE TOWING, INC.,

Defendant/Counter-Plaintiff.

OPINION AND ORDER

Defendants have filed a motion for reconsideration of the Court's March 28, 2016 Opinion and Order granting Plaintiffs' request to compel the production of the personal tax returns and related schedules for all of the individual shareholders of Service Towing, Inc., Wayne's Service, Inc. and Able Towing, LLC for the last five years and denying Defendants' motion to quash and/or for a protective order as to that request.

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 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 the portions of the tax returns sought which contain information related to the spouses of the shareholders in question are not relevant to this matter and should not be required to be produced. However, as is in their original motion, Defendants fail to provide the Court with any authority standing for the proposition that tax returns otherwise discoverable are rendered undiscoverable where the returns contain information related to non-party spouses of parties to the action. Based on Defendants' continued failure to support their position, Defendants' position will be rejected.

Defendants also contend that Plaintiffs should bear the production costs incurred by Metzler, Lochricchio, Serra & Co., P.C. ("MLS"), Defendants' accounting firm, in researching, producing and assembling the requested documents. MCR 2.310(D) permits a party to serve a nonparty with a request to inspect documents. Further, MCR 2.310(D)(5) provides that "[t]he court may order the party seeking discovery to pay the reasonable expenses incurred in complying with the request by the person from whom discovery is sought." In support of their request, Defendants rely on *Graham v Thompson*, 167 Mich App

371; 421 NW2d 694 (1988). In *Graham*, the Michigan Court of Appeals noted that subsection (5) permitted a court to order the party seeking discovery to pay the costs incurred by the non-party in complying with the request. The Court in *Graham* ultimately held that the non-party had failed to satisfy its obligation to furnish appropriate evidence in support of the charges it was requesting from the party seeking discovery. *Id.* at 375. Accordingly, the Court in *Graham* recognized that subsection (5) allows the non-party from whom discovery is sought to seek reimbursement, not the party opposing the discovery itself. Consequently, this Court is satisfied that while subsection (5) authorizes MLS to seek reimbursement, it does not allow Defendants to seek reimbursement. As a result, Defendants' request must be denied.

Finally, Defendants contend that Plaintiffs' request for tax returns since 2013 are irrelevant because Plaintiff Gail Hertz was terminated in 2013 and demanded the purchase of his shares at that time, making 2013 the last relevant year. However, Plaintiffs have alleged that Defendants actions have continued to cause them harm since 2013, and that Defendants have continued to be benefitted by their wrongful actions after 2013. Consequently, the Court is convinced that Defendants' tax returns are relevant to the issue of how much, if at all, Defendants actions have damaged Plaintiffs and benefitted themselves. As a result, the Court is satisfied that Defendants' position is without merit.

III. Conclusion

Based upon the reasons set forth above, Defendants' motion for reconsideration of the Court's March 28, 2016 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 the case.

IT IS SO ORDERED

Date: MAY 02 2016

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