

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

JF INDUSTRIAL SERVICES, LLC,

Plaintiff,

vs.

Case No. 2016-801-CB

ANASTACIOS BASSAKOS, JAMES  
BRANDIE, ROBERT LABUTTE, and  
CANAM INDUSTRIAL, LLC f/k/a JFI  
SERVICES, LLC,

Defendants.

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OPINION AND ORDER

FILED  
2016 OCT -5 A 9 41  
CARMELLA SABAUER  
MACOMB COUNTY CLERK  
MT. CLEMENS, MICHIGAN

Defendants have filed a motion for reconsideration of the portion of the Court's August 2, 2016 Opinion and Order denying their motion for summary disposition of Counts I and II of Plaintiff's complaint pursuant to MCR 2.116(C)(8).

In the interests of judicial economy the factual and procedural statements set forth in the Court's August 2, 2016 Opinion and Order are herein incorporated.

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 the portion of Count I, which is a claim for breach of fiduciary duty brought against Defendants Labutte and Brandie should be dismissed because Plaintiff's claim against them fails to state a claim upon which relief can be granted. Specifically, Defendants aver that Plaintiff alleges that Defendant Labutte and Brandie owe it a fiduciary duty simply by being two of its minority members, and that they do not owe Plaintiff a fiduciary duty based solely on their status as minority members.

In Count I of the Complaint, Plaintiff alleges that:

As members of [Plaintiff], [Defendants Bassakos, Brandie and LaButte had an affirmative duty to discharge their duties in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner they reasonably believed to be in the best interests of [Plaintiff].

(See Complaint, at ¶147.)

While not specifically cited by Plaintiff, the allegation in ¶147 mirrors the language utilized by Section 404 of the Michigan Limited Liability Company Act, which provides in pertinent part:

(1) A manager shall discharge the duties of manager in good faith, with the care an ordinary prudent person in a like position would exercise under similar circumstances, and in a manner the manager reasonably believes to be in the best interests of the limited liability company.

While ¶147 of the Complaint utilizes language similar to section 404, the distinctions are dispositive. Section 404 imposes a specific fiduciary duty on the manager of a limited liability company. In this case, Plaintiff has specifically plead that Defendant Bassakos was Plaintiff's sole manager. (See Complaint, at ¶30.) Consequently, while section 404 could impose a duty on Defendant Bassakos, as Plaintiff's manager, Plaintiff has not plead that Defendants Brandie or LaButte are its manager(s). As a result, section 404 does not impose a fiduciary duty on Defendant Brandie or LaButte. In addition, Plaintiff has not cited to any authority whatsoever that would impose a fiduciary duty on a minority members simply based on their status as a minority member. As a result, the Court is convinced that Defendants' motion for reconsideration must be granted to the extent that they seek summary disposition of the portion of Count I brought against Defendant Brandie and LaButte.

In addition, Defendants contend that they are entitled to summary disposition of Count II, a claim for breach of fiduciary duty brought solely against Defendant Bassakos. In support of their position, Defendants rely on this Court's August 2, 2016 Opinion and Order in case no. 2016-505-CB in support of their position that minority members such as Defendant Bassakos cannot be in control of a limited liability company, and therefore cannot owe the limited liability company a fiduciary duty. Specifically, Defendants rely on this Court's holding that minority members cannot oppress a majority member's membership interest because the majority member holds to power to name and replace Plaintiff's managers.

As a preliminary matter, the Court notes that it has previously relied on caselaw involving corporations in making its decisions in this case, which involves a limited

liability company, not a corporation. While this case involves a limited liability company that is governed by the Michigan Limited Liability Company Act ("LLCA"), courts have construed the LLCA's provisions by, in addition to relying on the LLCA and caselaw interpreting it, examining the law governing corporations and partnerships for guidance. See *International Flavors & Textures, LLC v Gardner*, 966 F Supp 552, 553 (WD Mich 1997), *Anest v Audino*, 322 Ill App 3d 468, 477; 773 NE2d 202 (2002), *McConnell v Hunt Sports Enters*, 132 Ohio App 3d 657, 687; 725 NE2d 1193 (1999). Accordingly, this Court is persuaded that utilizing caselaw that has interpreted similar issues in the context of corporation is appropriate in this case. As a result, the Court will continue to rely on authority in the context of both corporations and limited liability companies in making its decisions in this matter.

Turning back to Defendants' position that minority members such as Defendant Bassakos cannot be in control of a limited liability company, and therefore cannot owe the limited liability company a fiduciary duty Defendant's position, the Court remains convinced that Defendants' position without merit. As a corporation acts through its officers and directors, an LLC acts through its member-managers. See Del.Code Ann. Tit.6, §§18-101(10), (11), (12), 18-402; MCL 450.4401. Accordingly, unlike the context of a majority member arguing that a minority member oppressed his/her/its interest, an LLC is reliant on its member(s) who manage and control it. Moreover, as referenced above, MCL 450.4404 provides that an LLC's manager owes the LLC a duty to discharge his duties "in good faith, with the care an ordinary person in a like position would exercise under similar circumstances, and in a manner the manager reasonable believes to be in the best interest of the limited liability company." In this case, Plaintiff

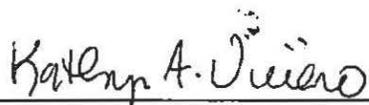
alleges that Defendant Bassakos managed and controlled it. (See Complaint, at ¶30.) Consequently, Plaintiff has plead sufficient facts, which if established, would present a situation in which Defendant Bassakos owed Plaintiff a fiduciary duty.

### III. Conclusion

For the reasons discussed above, Defendants' motion for reconsideration of the Court August 2, 2016 Opinion and Order is GRANTED, IN PART and DENIED, IN PART. Specifically, Defendant motion for reconsideration of the portion of the Court's Opinion and Order denying their motion for summary disposition of the portion of Count I brought against Defendants Labutte and Brandie is GRANTED, and summary disposition is hereby entered in favor of Defendants Labutte and Brandie as to Count I. The remainder of Defendants' motion for reconsideration 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.

DATED: OCT 05 2016

  
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Hon. Kathryn A. Viviano, Circuit Court Judge