

STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

INFUSION, INC., a Michigan corporation,

Plaintiff/Counter-Defendant,

vs.

Case No. 12-10712-CKB

HON. CHRISTOPHER P. YATES

OLIVIA GONZALES, an emancipated minor;
DOMINIQUE GONZALES, an individual;
DAVID GONZALES, an individual; and
CHACHI GONZALES LLC, an unincorporated
company,

Defendants,

and

GUADALUPE GONZALES, an individual;
and CHACHIMOMMA, INC., an
unincorporated company,

Defendants/Counter-Plaintiffs
and Cross-Plaintiffs,

vs.

OLIVIA GONZALES, an emancipated minor;
and DOMINIQUE GONZALES, an individual,

Cross-Defendants.

ORDER GRANTING GUADALUPE GONZALES'S MOTION FOR RECONSIDERATION

On December 23, 2014, the Court issued an opinion and order resolving the parties' cross-motions for summary disposition. On January 13, 2015, Defendant Guadalupe Gonzales submitted a motion seeking reconsideration of one aspect of the Court's ruling. Because a genuine issue of material fact exists with regard to that one issue, the Court must grant reconsideration.

As a general rule, MCR 2.119(F) permits relief in the form of reconsideration only when the moving party “demonstrate[s] a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error.” See MCR 2.119(F)(3). To be sure, “courts are permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court.” See Hill v City of Warren, 276 Mich App 299, 307 (2007). But MCR 2.119(F)(3) strongly suggests that something in the motion must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified.

Defendant Guadalupe Gonzales argues that the Court erred, in part, in resolving the breach-of-contract claim advanced by Plaintiff Infusion. The Court explained in its opinion that Guadalupe Gonzales admitted that “she worked together with her husband to sell ChachiMomma pants at the Body Rock Show in San Diego on June 29, 2013[,]” so the Court granted summary disposition to Infusion on that portion of the claim alleging breach of the parties’ exclusive licensing agreement. The motion for reconsideration concedes that Guadalupe Gonzales’s husband, David Gonzales, sold licensed products at the show, see Defendant Guadalupe Gonzales’ Motion for Reconsideration at 2, ¶ 5, but nonetheless contends that those sales took place with the knowledge and approval of the principal of Infusion, so those sales did not violate the exclusive licensing agreement.

During his deposition, Defendant David Gonzales testified that he received oral permission from Plaintiff Infusion’s principal, Brent Hawkins, to sell ChachiMomma pants at the Body Rock Show. See Defendant Guadalupe Gonzales’ Motion for Reconsideration, Exhibit 3 (Deposition of David Gonzales at 31-32). Although Hawkins has denied authorizing such sales, the record gives rise to a genuine issue of material fact on this issue, and thereby prevents the Court from awarding

summary disposition to Infusion under MCR 2.116(C)(10). The exclusive licensing agreement does not address the manner in which Infusion may grant permission to make such sales, so the Court has no basis to conclude that oral permission constitutes inadequate authorization. Moreover, the parties plainly engaged in such informal discussions, and Infusion manifestly authorized some sales of the ChachiMomma pants by sending pairs of pants to Guadalupe Gonzales to sell on her own. In sum, the Court must concede that it erred in granting summary disposition under MCR 2.116(C)(10) to Infusion on its claim that Guadalupe Gonzales breached the exclusive licensing agreement when her husband, David Gonzales, sold ChachiMomma pants at the Body Rock Show. Therefore, the Court must grant Guadalupe Gonzales's motion for reconsideration pursuant to MCR 2.119(F), rescind the award of summary disposition to Infusion on the breach-of-contract claim concerning the Body Rock Show sales of ChachiMomma pants, and leave that issue for resolution by the jury at trial.

IT IS SO ORDERED.

Dated: February 17, 2015



HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge