

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

P.A.G., INC.; and WEST MICHIGAN
LANDSCAPING & CONSTRUCTION,

Plaintiffs,

Case No. 12-11927-CKB

vs.

HON. CHRISTOPHER P. YATES

JOHN C. BUCHANAN, JR.,

Defendant.

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ORDER DENYING EVERYBODY'S MOTIONS FOR RECONSIDERATION

Even a broken clock is right twice a day, but many practitioners in the Specialized Business Docket (“SBD”) appear to believe that the Court is not even that accurate. In the summer of 2015, SBD practitioners are breaking new ground in the use of motions for reconsideration under MCR 2.119(F). For example, the Court has received a motion for reconsideration of a ruling on a motion for reconsideration. The Court has received a motion for reconsideration from the winning party on a motion. The Court has received motions for reconsideration of every single decision rendered in a busy three-week period. And in this case, both sides have moved for reconsideration of a decision that granted summary disposition on one count and denied summary disposition on the other count. The SBD was designed to resolve cases quickly and efficiently, but the decision-making process has been slowed significantly by the relentless submission of motions for reconsideration of almost every decision the Court makes. The Court takes seriously every motion filed, and the competing motions for reconsideration in this case have received careful consideration. Alas, in this case, as in so many other cases, the Court finds that the motions for reconsideration are completely unfounded.

On May 20, 2015, the Court issued an Opinion and Order Granting in Part, and Denying in Part, Defendant's Renewed Motion for Summary Disposition. On June 8, 2015, both sides moved for reconsideration. In addition, Defendant John C. Buchanan, Jr. ("Jack Jr.") submitted a motion styled as "Defendant's Motion for Issuance of Separate Opinion and Order of Defendant's Renewed Motion for Summary Disposition as to Plaintiff West Michigan Landscaping and Construction." On June 26, 2015, the Court heard oral arguments regarding that latest summary-disposition request, but the oral arguments also touched upon issues raised in the pending motions for reconsideration. Then, on August 4, 2015, the Court issued a six-page opinion granting in part, and denying in part, Jack Jr.'s renewed motion for summary disposition. Now, in the wake of that decision on the third round of summary-disposition requests, the Court must turn to the competing motions for reconsideration on the second round of summary-disposition requests.

A motion for reconsideration under MCR 2.119(F) permits relief only if 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." To be sure, courts may "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.

The Court's ruling subject to reconsideration concluded that Plaintiff P.A.G., Inc. ("PAG") could not proceed on its innocent-misrepresentation claim against Jack Jr., but it could go forward on its fraudulent-misrepresentation claim against Jack Jr. In dismissing PAG's claim for innocent misrepresentation, the Court concluded that Jack Jr. received no benefit from the misrepresentation,

so PAG’s claim ran afoul of the principle that, under the innocent-misrepresentation rule, “the victim must not only suffer injury, but also the injury must inure to the benefit of the other.” US Fidelity & Guaranty Co v Black, 412 Mich 99, 118 (1981); see also Roberts v Saffell, 280 Mich App 397, 404 (2008), quoting Forge v Smith, 458 Mich 198, 211-212 (1998). In a truly convoluted argument, PAG contends that “Jack Jr. received a benefit by the fact that the at-issue renovations to Units 4 and 5 of Hanger 42 which turned those units into a ‘turn-key film studio’ kept the viability of potentially receiving the required state tax credits alive and gave him additional time to buyout [sic] his father’s interest in Alpinist, LLC.” See Memorandum in Support of Plaintiffs’ Motion for Reconsideration at 5. In other words, the benefit supporting PAG’s innocent-misrepresentation claim is merely delay that enabled Jack Jr. to make his financial peace with his father. This metaphysical “benefit” falls outside Michigan courts’ understanding of what a plaintiff must demonstrate to support a claim for innocent misrepresentation,* and PAG has established no connection between its injury, *i.e.*, lack of payment, and Jack Jr.’s purported benefit, *i.e.*, delay. Therefore, the Court must deny PAG’s motion for reconsideration.

Similarly, the Court finds no basis to alter on reconsideration its denial of Jack Jr.’s motion for summary disposition on PAG’s fraudulent-misrepresentation claim. Jack Jr. faults the Court for failing to apply the clear-and-convincing evidence standard in ruling on that motion, contending that PAG’s fraudulent-misrepresentation claim cannot pass muster under that standard. To be sure, fraud claims must satisfy a heightened pleading standard, see State ex rel Gurganus v CVS Caremark Corp,

* For example, our Court of Appeals has held (albeit in an unpublished decision) that timing – as opposed to money – cannot constitute a “benefit that has inured to defendants” for an innocent-misrepresentation claim. See Simpson v JP Morgan Chase Bank, NA, No 302800, slip op at 5 (Mich App June 14, 2012) (unpublished decision).

496 Mich 45, 63 (2014), and fraud ordinarily must be “‘proved by clear, satisfactory and convincing’ evidence[.]” Cooper v Auto Club Ins Ass’n, 481 Mich 399, 414 (2008). But the Court cannot weigh competing evidence in resolving a summary-disposition motion under MCR 2.116(C)(10). Indeed, our Court of Appeals has ruled that “‘a court may not weigh the evidence before it or make findings of fact; if the evidence before it is conflicting, summary disposition is improper.’” See Lysogorski v Bridgeport Charter Township, 256 Mich App 297, 299 (2003), quoting DeFlaviis v Lord & Taylor, Inc, 223 Mich App 432, 436 (2003). Therefore, the Court must decline Jack Jr.’s invitation to weigh the evidence under the clear-and-convincing evidence standard. Accordingly, the Court must deny Jack Jr.’s motion for reconsideration.

In this case, as in so many others assigned to the SBD, the Court finds no basis whatsoever for altering on reconsideration the decisions it made in a carefully crafted opinion. Neither side may like that result, but neither side has remotely approached the showing necessary for relief under MCR 2.119(F). Simply put, some cases cannot be resolved by summary disposition, and this case is one of them. As a result, the Court shall deny the competing motions for reconsideration and expect the parties to begin trial as scheduled on September 14, 2015.

IT IS SO ORDERED.

Dated: August 11, 2015



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