

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

KATHLEEN KARCZEWSKI, an individual;
and TANYA CRAIG, an individual,

Plaintiffs/Counter-Defendants,

Case No. 13-04651-CBB

vs.

HON. CHRISTOPHER P. YATES

MARKET CENTER TITLE COMPANY,
LLC, a Michigan limited liability company,

Defendant/Counter-Plaintiff,

and

JON A. JACKSON, an individual; KAROL
COOLEY, an individual; MICHELE T.
BROWN, an individual; and CHARLES
FAST, an individual,

Defendants.

ORDER DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION

On August 25, 2014, the Court issued an Opinion and Order Granting Summary Disposition to the Defendants on Counts One and Two of Plaintiffs' Complaint. Then, on September 15, 2014, the plaintiffs filed a motion for reconsideration. The defendants responded with a brief in opposition to the motion for reconsideration, and the plaintiffs filed a reply brief. After careful consideration, the Court concludes that the motion for reconsideration must be denied.

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.

In moving for reconsideration, the plaintiffs fault the Court for interpreting the term “Keller Williams Realty” in the 2007 version of the operating agreement of Market Center Title Company, LLC (“Market Center”) as a reference to an entity called Grand Rapids Market Center East, Inc. d/b/a Keller Williams of Grand Rapids, East (“Keller Williams East”). This designation matters because, by all accounts, the plaintiffs voluntarily left Keller Williams East to join a different Keller Williams broker, thereby remaining under the broad Keller Williams umbrella despite ending their affiliation with Keller Williams East. The plaintiffs argue that they simply had to remain with Keller Williams, Inc., in any capacity in order to retain their Series B units in Market Center, whereas the defendants insist that the plaintiffs had to remain with Keller Williams East in order to keep their Series B units in Market Center. Although the Court concedes that Market Center’s 2007 operating agreement does not contain any hand-written reference to “Keller Williams of Grand Rapids East” in place of “Keller Williams Realty,” as asserted in footnote 3 on page 6 of the Court’s opinion and order, the correction of that mistake does not change the outcome of the Court’s analysis.

The meaning of the term “Keller Williams Realty” in the 2007 version of the Market Center operating agreement presents a latent ambiguity, which requires the Court to look outside the four corners of the document to ascertain the parties’ intent. Shay v Aldrich, 487 Mich 648, 668 (2010). Turning to extrinsic evidence to ascertain the meaning of the 2007 operating agreement, the Court

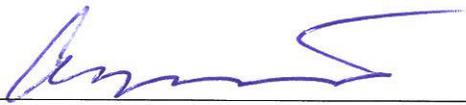
must consider statements of intent expressed by the parties outside the operating agreement. Klapp v United Ins Group Agency, Inc, 468 Mich 459, 470 (2003). Significantly, the “parties” whose intent the Court must consider do *not* include the plaintiffs in the instant case. On August 1, 2007, four of the defendants – Jon Jackson, Karol Cooley, Michele Brown, and Charles Fast – entered into the 2007 version of the Market Center operating agreement. See Complaint, Exhibit A (Amended and Restated Operating Agreement for Market Center Title Company, LLC, at 17). Those defendants have stated that the reference to an “affiliation with Keller Williams Realty” in section 6.2(g)(ii) of the 2007 operating agreement means working as a commissioned agent for Keller Williams East. See, e.g., Defendants’ Exhibit A (Affidavit of Jon A. Jackson, ¶ 16); Defendants Market Center Title Company, LLC’s Counterclaim, ¶ 9. The plaintiffs’ conflicting interpretation of an “affiliation with Keller Williams Realty” cannot influence the Court’s construction of the 2007 operating agreement because the plaintiffs were not parties to the 2007 operating agreement. They simply joined through subscription agreements in the wake of the defendants’ execution of the 2007 operating agreement. Consequently, the Court’s review of the extrinsic evidence necessarily leads to the conclusion that the 2007 operating agreement entitled the manager of Market Center to repurchase Series B units whenever a Series B member’s affiliation with Keller Williams East ended.

The Court’s interpretation of the term “Keller Williams Realty” in the 2007 version of the Market Center operating agreement is fortified by past practices, which included the repurchase of the Series B units of each and every agent who departed Keller Williams East before the plaintiffs left. See Defendants’ Exhibit A (Affidavit of Jon A. Jackson, ¶¶ 12-14). Additionally, considering the 2007 operating agreement as a whole, the Court concludes that the defendants have offered the only plausible reading of that agreement. Jon Jackson, as office manager of Keller Williams East,

had the authority to offer Series B units to successful agents. It would be illogical for Mr. Jackson, acting in that capacity, to afford such a lucrative opportunity to Keller Williams agents unaffiliated with Keller Williams East. In sum, neither law, nor logic, nor meaningful extrinsic evidence in this case supports the plaintiffs' proposed interpretation of the term "Keller Williams Realty" in the 2007 operating agreement. Thus, the Court must deny the plaintiffs' motion for reconsideration and leave in place its August 25, 2014, Opinion and Order Granting Summary Disposition to the Defendants on Counts One and Two of Plaintiffs' Complaint.

IT IS SO ORDERED.

Dated: December 18, 2014



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