

STATE OF MICHIGAN

IN THE 20TH CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET

414 Washington Street
Grand Haven, Michigan 49417
(616) 846-8320

MEDIA ONE COMMUNICATIONS, LLC,
a Michigan limited liability company,

Plaintiff,

v

MACATAWA BANK CORPORATION,
a Michigan corporation; **COASTAL REAL
ESTATE,** a Michigan limited liability
company; and **MACATAWA LEGENDS
HOMEOWNERS ASSOCIATION,** a
domestic nonprofit corporation,

Defendants.

**OPINION AND ORDER DENYING
MOTION FOR RECONSIDERATION**

Case No.: 15-4299-CB

Hon. Jon A. Van Allsburg

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At a session of said Court, held in the Ottawa County
Courthouse in the City of Grand Haven, Michigan
on the 22nd day of January, 2016

Plaintiff Media One Communications LLC (Media One) brings a motion for reconsideration of the opinion and order of this Court filed November 23, 2015 granting the joint motion for summary disposition brought by defendant Macatawa Bank Corporation and defendant Coastal Real Estate (hereinafter collectively referred to as "Macatawa Bank").

FACTUAL BACKGROUND

Media One installs and maintains fiber optic communications networks. In 2002, Partners Fore Development Group LLC (PFD) commenced construction of "Macatawa Legends," a multi-unit residential development. Macatawa Bank, as mortgagee, provided financing for the development. In 2004, Media One entered into an agreement with PFD (hereinafter, "Fiber Optic Agreement"). Under the Fiber Optic Agreement, Media One agreed to



provide fiber optic broadband service to each unit in the development. In return, PFD agreed to pay Media One \$2,460 per unit, plus \$85 per unit per month.

On August 15, 2006, PFD executed a document titled “Amendment to Easement” which states: “This Amendment to Easement shall be subject to all of the terms and conditions contained in the Fiber Optic Agreement.” On the same day, Macatawa executed a document titled “Consent.” The Consent states that Macatawa Bank consents to the Amendment to Easement and that the bank shall “honor and recognize” the “releases and rights” made and granted by the Amendment to Easement.

PFD commenced selling units in the development. Throughout 2005 and into 2006, PFD made the payments to Media One called for in the Fiber Optic Agreement. However, in 2006, PFD ceased making these payments. Macatawa Bank foreclosed on the mortgage and purchased PFD’s remaining property rights in the development at the sheriff’s sale.

In this action, Media One seeks hold Macatawa Bank responsible for the payments that PFD promised to make to Media One. Media One argues that because the Amendment to Easement states that it is “subject to” the Fiber Optic Agreement, by promising to “honor and recognize” the rights made in the Amendment to Easement – which include the rights contained in the Fiber Optic Agreement – Macatawa Bank agreed to make the payments to Media One that PFD promised to make in the Fiber Optic Agreement should PFD fail to make said payments. Macatawa Bank responds that it has no obligation to make the payments to Media One called for in the Fiber Optic Agreement.

Macatawa Bank’s motion for summary disposition raised two questions: what is meant by the words “subject to” in the Amendment of Easement, and what is meant by the words “honor and recognize” in the Consent.

In the opinion and order filed November 23, 2015, this Court held that the Amendment to Easement and the Consent were not ambiguous and that the words used therein must be given their plain-sense meaning. Citing *Mayor of the City of Lansing v Public Service Commission*, 470 Mich 154, 160; 680 NW2d 840 (2004), the Court held that the words “subject to” in the Amendment to Easement meant “dependent upon,” i.e., that the Amendment to Easement was “dependent upon” the Fiber Optic Agreement because, but for the existence of the Fiber Optic Agreement, there would be no need for the releases and rights spelled out in the Amendment to Easement. Thus, the Amendment to Easement is “dependent upon” the Fiber Optic Agreement for its very existence. Citing *Clark v Detroit Curling Club*, 298 Mich 339, 340; 299 NW 99 (1941), and Black’s Law Dictionary, the Court held that the words “honor and recognize” in the Consent could not reasonably be read to constitute a commitment by Macatawa Bank to make the payments to Media One that PFD promised to make in the Fiber Optic Agreement should PFD fail to make said payments. Instead, the Court held that the words “honor and recognize”

meant that Macatawa Bank recognized, praised, and saluted the commitments that PFD and Media One made to each other in the Consent. For this reason, the Court granted Macatawa Bank's motion for summary disposition pursuant to MCR 2.116(C)(8). Plaintiff now moves for reconsideration of the Court's decision, asserting the Court made a palpable error, the correction of which should change the Court's ruling on the motion for summary disposition.

LEGAL ANALYSIS

1. Standard of Review

Motions for reconsideration are governed by MCR 2.119(F). MCR 2.119(F)(3) provides, in pertinent part: "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." "[A] trial court has unrestricted discretion to review its previous decision." *Prentis Foundation v Karmanos Cancer Institute*, 266 Mich App 39, 52-53; 698 NW2d 900 (2005). A motion for reconsideration may be granted even if the motion merely presents the same issue initially argued and decided. *In re Moukalled Estate*, 269 Mich App 708, 714; 714 NW2d 400 (2006). However, a motion for reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. *Churchman v Rickerson*, 240 Mich App 223; 611 NW2d 333 (2000). The moving party must demonstrate a palpable error by which the court and the parties have been misled and show that a different disposition must result from correction of the error. To be "palpable" is to be easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, or manifest. *Luckow Estate v Luckow*, 291 Mich App 417, 805 NW2d 453 (2011).

2. Analysis

Media One's motion for reconsideration does not challenge the Court's interpretation of the words "subject to" in the Amendment to Easement. Instead, Media One challenges the Court's interpretation of the meaning of the words "honor and recognize" in the Consent.

Media One contends that by using the words "honor and recognize" in the Consent, Macatawa Bank – which was a stranger to the Fiber Optic Agreement – made a binding commitment to perform PFD's contractual obligations to Media One should PFD fail to perform said obligations. The consequence of Media One's interpretation is that the use of the words "honor and recognize" by a third party stranger to a contract converts the third party into a guarantor or surety for the performance of one of the contracting parties. This Court finds that this interpretation of "honor and recognize" contravenes the plain-sense meaning of these words. The Court further finds that there is no Michigan case that may fairly be read to support such an interpretation of "honor and recognize."

Media One cites five published cases: *Michigan Education Association v North*

Dearborn Heights School District, 164 Mich App 39, 47-48; 425 NW2d 503 (1988); *Stoel v Charlevoix Township Unit School District No. 1*, 351 Mich 152, 158; 88 NW2d 273 (1958); *Michigan National Bank v Metro Institutional Food Service, Inc*, 198 Mich App 236, 240; 497 NW2d 225 (1993); *English Gardens Condominium LLC v Howell Township*, 273 Mich App 69, 75; 729 NW2d 242 (2006); and *Wayne County Board of Commissioners v Wayne County Airport Authority*, 253 Mich App 144, 170-171; 658 NW2d 804 (2002).

Michigan Education Association examined the legislative intent behind two provisions of the School Code. *Stoel* involved an interpretation of the teacher contract statute. *Michigan National Bank* and *English Gardens* each involved an interpretation of a letter of credit. *Wayne County Board* involved an alleged violation of the Headlee Amendment. None of these cases stands for the proposition that the use of the words “honor and recognize” by a stranger to a contract amounts to a commitment by the stranger to act as guarantor or surety for the performance of one of the contracting parties.

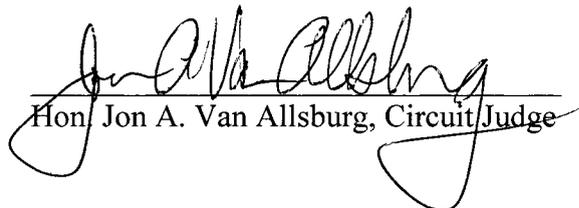
The words “honor and recognize” in the Consent are not without meaning. The common-sense meaning of these words, as used in the Consent, is this: (1) Macatawa Bank is aware of the existence of, the parties to, and the terms and conditions of the Fiber Optic Agreement; (2) Macatawa Bank will respect the rights and obligations of the parties to the Fiber Optic Agreement; and (3) Macatawa Bank will take no action that would frustrate, interfere with, hinder, or otherwise obstruct the rights and obligations of the parties to the Fiber Optic Agreement, and (4) Macatawa Bank will not, in any way, interfere with the parties’ performance of their rights and obligations to each other under the Fiber Optic Agreement.

3. Conclusion

Media One has failed to identify a palpable error by which the court and the parties have been misled, and has not shown that a different disposition of Macatawa Bank’s motion for summary disposition must result from the correction of said error. Instead, Media One disagrees with the Court’s reasoning and its decision on an issue of law. While reasonable minds may disagree, the Court finds its decision to be the correct one. For this reason, Media One’s motion for reconsideration must be, and is, DENIED.

IT IS SO ORDERED.

Dated: January 22, 2016


Hon. Jon A. Van Allsburg, Circuit Judge