

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

O.P. INVESTMENT GROUP, LLC,

Plaintiff,

v

Case No. 19-178132-CB
Hon. Michael Warren

YOUSEF DANOU,

Defendant.

**OPINION AND ORDER DENYING ALPHA FLOW'S MOTION FOR
RECONSIDERATION OF THIS COURT'S ORDER REGARDING MOTION
DATED OCTOBER 1, 2024 AND ORDER AUTHORIZING SALE OF REAL
PROPERTY LOCATED AT 1504 RIVONA, WEST BLOOMFIELD[,] MICHIGAN TO
PROPOSED PURCHASER FREE AND CLEAR OF LIENS AND ENCUMBRANCES
AND TO TRANSFER LIENS TO PROCEEDS OF SALE DATED OCTOBER 4, 2024**

At a session of said Court, held in the
County of Oakland, State of Michigan
November 7, 2024

PRESENT: HON. MICHAEL WARREN

OPINION

I
Overview

Before the Court is Alpha Flow's Motion for Reconsideration of this Court's Order
Regarding Motion dated October 1, 2024 and Order Authorizing Sale of Real Property
Located at 1504 Rivona, West Bloomfield[,] Michigan to Proposed Purchaser Free and
Clear of Liens and Encumbrances and to Transfer Liens to Proceeds of Sale dated October

4, 2024. On October 1, 2024, the Court granted the Receiver's motion for an order authorizing the sale of real property located at 1504 Rivona in West Bloomfield. The October 1, 2024 Order reflects that the Court considered (a) the motion, (b) O.P. Investment Group, LLC's ("OP") concurrence, (c) Yousef Danou's ("Danou") response and (d) Alpha Flow's objection and response, and granted the motion for the following reasons:

1. Nearly all of the Defendant's Response and Alpha Flaw's Objection and Response are challenges to decisions which have already been determined by this Court's predecessors. The Receivership has long been in place, and the Receivership Order authorizes the sale of the real property at issue and the transfer of the liens from the real property to the proceeds of the sale. The Defendant and Alpha Flaw do not meaningfully challenge the Receiver's determination that the prospective sale is fair and is the most advantageous manner in which to alienate the property. Even if the Defendant's Response and Alpha Flaw's arguments have not been waived, the arguments are simply untimely, thinly disguised motions for reconsideration. MCR 2.119(F). As such, the Motion should be granted.

2. Even if the Court were to look past the untimely nature of Alpha Flaw's Objection and Response (which the Court does not), as the Motion and Concurrence reveal, Alpha Flaw's arguments have been waived. Presuming that Alpha Flaw has standing to file its Objection and Response (as Alpha Flaw has not yet successfully intervened in this case), it had the same standing to object to the prior parallel order and decisions of the Court involving the authority of the Receiver and manner of disposing of the real property and transfer of the liens. Alpha Flaw was clearly aware of the proceedings, even appeared, and failed to object. This is waiver. See authorities cited in the Concurrence.

3. Even if the Court were to look past the untimely nature of Alpha Flaw's Objection and Response (which the Court does not) and the issue was not waived (and it was), Alpha Flaw's argument fails on the merits. Alpha Flaw's heavy reliance on MCL 554.1011 et seq. (in particular MCL 554.1026(3)) is misplaced - that act involves "commercial property" and the real estate at issue is a residential home. The Receivership was appointed under MCL 600.2926 and MCR 2.622, not MCL 554.1011 et seq. True

enough, the Receivership Order refers to the Defendant's responsibilities by reference to MCL 544.1023, but that does not transmogrify the order into one under MCL 554.1101 or import into the order the restriction of MCL 544.1026(3). Alpha Flow's argument that the Receiver's fees should not be paid before its claims is likewise unsupported. The remainder of Alpha Flow's arguments (ripeness, vagueness, etc.) are well dispensed by the Motion and Concurrence.

4. Even if the Court were to look past the untimely nature of the Defendant's Response (which the Court does not), it too is devoid of merit. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). Because the Defendant has failed to cite any authority to support its argument, the argument is deemed abandoned. See, e.g., *Mitcham v City of Detroit*, 355 Mich 182, 203 (1959); *Houghton v Keller*, 256 Mich App 336, 339-340 (2003); *People v Odom*, 327 Mich App 297, 311 (2019) ("As a preliminary matter, defendant has failed to identify any authority that requires a trial court to consider a motion for substitute counsel before it may consider any subsequently filed motion by the attorney who was the subject of the motion for substitution. Accordingly, defendant has abandoned this issue. See *People v Martin*, 271 Mich App 280, 315 (2006)"); MCR 2.119(A)(2) ("A motion or response to a motion that presents an issue of law must be accompanied by a brief citing the authority on which it is based"). After all, judges "are not like pigs, hunting for truffles" that might support a party's position. *Dibrell v City of Knoxville*, 984 F3d 1156 (CA 6. 2021).

[October 1, 2024 Order.]

On October 4, 2024, an order authorizing the sale was entered. On October 10, 2024, a stipulated order regarding costs was entered.

Alpha Flow now moves for reconsideration of the October 1, 2024 and October 4, 2024 Orders, arguing that it did not have time to prepare a reply as the underlying motion was granted on October 1, 2024 without oral argument; thus, it was not provided an opportunity to address the arguments raised in OP's concurrence. The Court having

reviewed the Motion and otherwise being fully informed in the premises, hereby dispenses with oral argument as it would not assist the Court in rendering a decision. MCR 2.119(F)(2).

At stake is whether a motion for reconsideration should be granted when there has been no showing of a palpable error by which the Court and parties were misled requiring a different disposition to correct such palpable error, and the circumstances do not justify allowing a “second chance” to argue matters that could have been argued at the time of the motion? Because the answer is “no,” the Motion is denied.

II **Law Regarding Motions for Reconsideration**

A motion for reconsideration must demonstrate “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 that merely presents the same issues as ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cason v Auto Owners*, 181 Mich App 600, 605 (1989). There is no abuse of discretion in denying a motion resting on a legal theory or facts which could have been pled or argued prior to the trial court’s original order. *Charbeneau v Wayne County Gen'l Hosp*, 158 Mich App 730, 733 (1987).

III Analysis

Having carefully reviewed and considered the Motion, relief is not warranted because the Motion (1) fails to allege or demonstrate palpable error by which this Court and the parties were misled, (2) fails to show that a different disposition of the underlying motion must result from correction of any error, and/or (3) raises arguments and authorities that were or could have been argued prior to this Court's October 1, 2024 and October 4, 2024 Orders. In short, Alpha Flow has merely presented, expressly and by reasonable implication, the same issues as previously ruled upon by this Court.

First, Alpha Flow disregards that MCR 2.119 governs motion practice and does not permit the filing of a reply. Moreover, MCR 2.119(E)(2) clearly provides that the court may rule without oral argument. Dispensing with oral argument is certainly not palpable error.

Without limiting the foregoing, Alpha Flow disregards that its objection failed to meaningfully challenge the underlying motion. Instead, as reflected in the October 1, 2024 Order, Alpha Flow's objection was merely an untimely challenge to prior decisions made in the case. [October 1, 2024 Order ("1. Nearly all of the Defendant's Response and Alpha Flaw's Objection and Response are challenges to decisions which have already been determined by this Court's predecessors. The Receivership has long been in place, and the Receivership Order authorizes the sale of the real property at issue and the transfer of the liens from the real property to the proceeds of the sale. The Defendant and Alpha

Flow do not meaningfully challenge the Receiver's determination that the prospective sale is fair and is the most advantageous manner in which to alienate the property. Even if the Defendant's Response and Alpha Flow's arguments have not been waived, the arguments are simply untimely, thinly disguised motions for reconsideration. MCR 2.119(F). As such, the Motion should be granted."].

Further, Alpha Flow argues it has standing to object to the motion to sell. Setting aside that motions for reconsideration are not a mechanism to cure cursorily raised issues and deficient briefing, the October 1, 2024 Order reflects that the Court's decision presumed Alpha Flow had standing. [October 1, 2024 Order ("Presuming that Alpha Flow has standing to file its Objection and Response (as Alpha Flow has not yet successfully intervened in this case), it had the same standing to object to the prior parallel order and decisions of the Court involving the authority of the Receiver and manner of disposing of the real property and transfer of the liens. Alpha Flow was clearly aware of the proceedings, even appeared, and failed to object."].

Moreover, Alpha Flow's argument that the underlying motion is premature was raised in its objection and response and the Court was not persuaded. In the end, Alpha Flow has failed to demonstrate any palpable error that warrants a different disposition of the underlying motion. Although there may be occasions to exercise discretion and allow a second chance to argue a position, such an occasion is not presented in the instant circumstances. *Carey Investments, LLC v Mount Pleasant*, 342 Mich App 304, 319-320 (2022) (trial court's refusal to change its decision in response a motion for reconsideration that

was nothing more than a regurgitation of the underlying argument was not an abuse of discretion).

ORDER

In light of the foregoing Opinion, Alpha Flow's Motion for Reconsideration of this Court's Order Regarding Motion dated October 1, 2024 and Order Authorizing Sale of Real Property Located at 1504 Rivona, West Bloomfield[,] Michigan to Proposed Purchaser Free and Clear of Liens and Encumbrances and to Transfer Liens to Proceeds of Sale dated October 4, 2024 is DENIED.

/s/ Michael Warren

**HON. MICHAEL WARREN
CIRCUIT COURT JUDGE**

