

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF LEELANAU

G&T CONSULTING, INC., a Michigan corporation,
d/b/a GENESIS CONSTRUCTION,

Plaintiff,

v

File No. 00-5420-CK
HON. PHILIP E. RODGERS, JR.

GTB INDIAN HOUSING AUTHORITY, INC., a
Michigan corporation,

Defendant.

Darryl T. Johnson (P45128)
Attorney for Plaintiff

William Rastetter (P26170)
Attorney for Defendant

John F. Petoskey (P41499)
Attorney for Defendant

DECISION AND ORDER REGARDING
PLAINTIFF'S MOTION FOR RECONSIDERATION

This breach of contract action was filed in December of 2000. On January 29, 2001, the Defendant filed a motion for summary disposition on the grounds that this Court lacked jurisdiction over the person of the Tribe and its departments because of immunity granted by law. MCR 2.116(C)(1) and (7). The Court heard the arguments of counsel on February 26, 2001. On May 1, 2001, the Court entered its order granting the motion and dismissing the case.

On April 27, 2001, the Plaintiff filed a motion for reconsideration. On May 8, 2001, the Court issued an amended pre-hearing order giving the Defendant 14 days from the date of the order to file a response and giving the Plaintiff 28 days from the date of the order to file a reply. Those deadlines have now expired. The Court having now reviewed all documents submitted, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order.

STANDARD OF REVIEW

MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, reads in pertinent part, as follows:

(3) Generally, and without restricting the discretion of the court, a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. 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 court's decision to grant a motion for reconsideration is an exercise of discretion. MCR 2.119(F)(3); *Michigan Nat'l Bank v Mudgett*, 178 Mich App 677, 681; 444 NW2d 534 (1989). Thus, "[i]f a trial court wants to give a 'second chance' to a motion it has previously denied, it has every right to do so, and this court rule, MCR 2.119(F)(3), does nothing to prevent this exercise of discretion. All this rule does is provide the trial court with some guidance on when it may wish to deny motions for rehearing." *Smith v Sinai Hosp of Detroit*, 152 Mich App 716, 723; 394 NW2d 82 (1986). The rule allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties. See *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987).

I.

The issue presented by the Defendant's motion for summary disposition was whether this Court had jurisdiction and, if so, whether the Defendant had immunity. The Plaintiff had sued GTB Indian Housing Authority, Inc., a Michigan corporation.¹ The Defendant asserted, however, that the Indian Housing Authority was not an independent corporate entity, but rather a department of the Tribe, and that jurisdiction was proper in the tribal court and/or that it was immune from suit.

In granting the Defendant's motion, this Court relied upon the submissions from the Defendant. A fair reading of the affidavits of Dora Willis and John Petoskey led the Court to

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The parties agree that a state court does have jurisdiction to hear suits against a state corporation even if it is wholly owned by the Tribe.

conclude that there never was an independent corporate entity. The Court was led to the conclusion that, even if there had been a corporate entity at some time, the subject contract postdated the dissolution of that corporation.

According to the affidavit of Susan Sherman and the attached statement from the Michigan Corporation, Securities & Land Division Bureau, the corporate Defendant was incorporated as a Michigan nonprofit corporation on August 24, 1989 and automatically dissolved on October 1, 1997. The contract that forms the basis of this action was negotiated in November of 1996 and executed on January 23, 1997 by Melvin Wilson, who was, according to the State's records, the president of the corporation at that time.

The Plaintiff has convinced this Court that it may have made an error. For this reason, the Plaintiff's motion for reconsideration should be and hereby is granted. This case is reinstated for the limited purpose of permitting the Plaintiff to conduct discovery, including interrogatories, requests for production of documents, requests for admissions and depositions, regarding the jurisdictional issue. The Plaintiff shall have 90 days from the date of this decision and order to complete discovery on this issue. A hearing will then be scheduled so that the Court can determine whether the Plaintiff can meet its burden of showing that this Court has jurisdiction. If the Plaintiff is able to do so, the case will be reopened for all purposes. Failing to do so, the case shall again be dismissed. IT IS SO ORDERED.

This decision and order reopens this case.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

Dated: _____