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STATE OF MICHIGAN
SIXTEENTH JUDICIAL CIRCUIT COURT

BRAD M. PATRICK, individually, as a
representative of a class of similarly-situated
persons and entities,

Plaintiff,

vs.

Case No. 2017-003018-CZ

CITY OF ST. CLAIR SHORES,

Defendant.

_____ /

ORDER

Defendant City of St. Clair Shores (the "City") has filed a motion for reconsideration of the Court's October 18, 2018 Opinion and Order and a supplementation in support of its motion for reconsideration. In the interests of judicial economy, the factual and procedural history set forth in the Court's October 18, 2018, Opinion and Order is herein incorporated.

Standard of Review

A motion for rehearing or reconsideration must be filed and served no later than 21 days after entry of the Order. MCR 2.119(F). The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). A court's decision to grant a motion for reconsideration is an exercise of discretion. *Kokx v Bylenga*, 241 Mich App 655, 658; 617 NW2d 368 (2000). The moving party must demonstrate palpable error by which the Court and the parties have been misled and show different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration that merely presents the same issues ruled

upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* However, courts are “permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court.” *Hill v City of Warren*, 276 Mich. App 299, 307; 740 NW2d 706 (2007). The trial court does not abuse its discretion “in denying a motion resting on a legal theory and facts which could have been pled or argued prior to the trial court’s original order.” *Chareneau v Wayne Co. Gen Hospital*, 158 Mich. App 730, 733; 405 NW2d 151 (1987).

In its motion for reconsideration, Defendant contends that the Court erred in denying its counter-motion for summary disposition as to count II – assumpsit for money had and received for violation of the Prohibited Tax by Cities and Villages Act, MCL 141.91 and count III – unjust enrichment for violation of the Prohibited Taxes by Cities and Villages Act, MCL 141.91. Defendant avers that Plaintiff’s claims for assumpsit and unjust enrichment fail as a matter of law because equitable relief is not available where there is a remedy at law. See *Tkachik v Mandeville*, 487 Mich 38, 45; 790 NW2d 260 (2010); *Gleason v Kincaid*, 323 Mich. App 308, 318-319; 917 NW2d 685 (2018). Defendants rely on a September 19, 2018 Order and hearing transcript from the Wayne County Circuit Court case *Gottesman v City of Harper Woods*, case number 17-1341-CZ. See Defendant’s Exhibit B, Order and transcript.

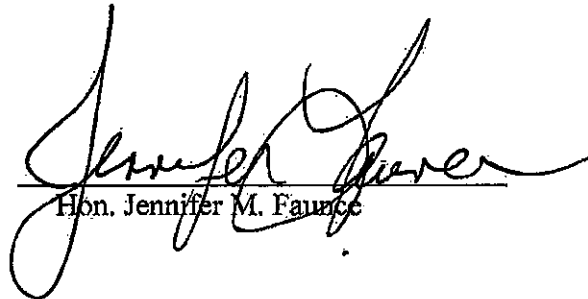
In its supplementation in support of its motion for reconsideration, Defendant maintains that the recent decision in *Binns v City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued November 6, 2018 (Docket Nos. 337609 and 339176) warrants reconsideration of the Court’s ruling on Count I of Plaintiff’s complaint. Defendant also argues that it is entitled to summary disposition of Plaintiff’s claims for unreasonable water rates in count VI and V of the

complaint. Lastly, Defendant contends that Plaintiff's equitable claims are barred by the doctrine of laches.

The Court finds that Defendant has failed to present the above arguments prior to the Court's October 18, 2018 Opinion and Order. See *Chareneau*, 158 Mich App at 733. However, in the interests of judicial economy, the Court orders that Plaintiff may file a response to Defendant's motion for reconsideration and supplementation to its motion for reconsideration within twenty-one days from the date of this Order. See MCR 2.119(F)(2). Until all matters are resolved, this case remains OPEN. MCR 2.602(A)(3).

IT IS SO ORDERED.

DATED: December 10, 2018



Hon. Jennifer M. Faunce

Gregory D. Hanley, Attorney for Plaintiff
Rabdak

Kim Plets

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