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HON. STUART A. MINKOWITZ, A.J.S.C.  
SUPERIOR COURT OF NEW JERSEY  
JUDGE'S CHAMBERS

PREPARED BY THE COURT:

MARY PURZYCKI, ET AL.,  
*Plaintiffs,*

v.

LAKE PARSIPPANY  
PROPERTY OWNERS ASSN.,  
INC., AND BOARD OF  
DIRECTORS,  
*Defendants.*

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - CIVIL PART  
MORRIS COUNTY

Docket No. MRS-C-2-17

Civil Action

ORDER

THIS MATTER, having been opened to the Court upon Plaintiffs', Mary Purzycki, et al., Motion for Reconsideration, by their attorney, Brian M. Rader, Esq., of Rader Law LLC; and opposition having been filed by Defendants, Lake ParsIPPany Property Owners Association, Inc. and Board of Directors, by their attorney, Howard B. Mankoff, Esq., of Marshall Dennehey Warner Coleman & Goggin, P.C.; and the Court having considered all submissions, and for good cause having been shown, and for the reasons set forth in the accompanying Statement of Reasons;

IT IS, on this 22<sup>nd</sup> day of March, 2019;

ORDERED, that Plaintiff's Motion for Reconsideration is DENIED



HON. STUART A. MINKOWITZ, A.J.S.C.

- ( ) Unopposed
- (x) Opposed

A copy of this Order and the accompanying Statement of Reasons shall be served on all parties within seven (7) days of the signing of this Order.

**I. BACKGROUND AND PROCEDURAL HISTORY**

The Court incorporates the facts as set forth in its Statement of Reasons, dated October 7, 2019. The underlying action was brought by Plaintiffs, Mary Purzycki, et al. (“Plaintiffs”) against Defendants, the Lake Parsippany Property Owners’ Association, Inc., et al. (“LPPOA” or “Defendants”). Plaintiffs alleged that the developed tracts surrounding Lake Parsippany (the “Lake”) did not constitute a common interest community. Plaintiffs further argued that Defendants could not compel Lake residents to join Defendants’ homeowners association, nor could Defendants impose mandatory dues on Plaintiffs to maintain the Lake.

On July 25, 2019, Defendants filed a Motion for Summary Judgment. Plaintiffs filed an Opposition to Defendants’ Cross-Motion for Summary Judgment and Reply in Further Support of Plaintiffs’ Motion for Summary Judgment on July 29, 2019. On September 9, 2019, the Court heard oral argument in this matter. On October 7, 2019, the Court entered Judgment in favor of Defendants, finding that the Lake was a common interest community and that the easement language in property owners’ deeds allows Defendants to impose an easement assessment in order to maintain the Lake. The instant Motion for Reconsideration followed on October 25, 2019.

**II. LEGAL ANALYSIS**

**a. Motion for Reconsideration Standard**

Pursuant to Rule 4:49-2, a motion for reconsideration shall state with specificity the basis on which it is made, including a statement of matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred. R. 4:49-2. In Cummings v. Bahr, 295

N.J. Super. 374, 384 (App. Div. 1996), the Appellate Division held that R. 4:49-2 applies (1) when the court's decision is based upon incorrect reasoning; (2) if the court failed to consider evidence; or (3) if there is good reason for the court to reconsider new information. In short, reconsideration is appropriate only when "the court has expressed its decision upon a palpably incorrect or irrational basis or it is obvious that the court either did not consider, or failed to appreciate the significance of, probative competent evidence." Fusco v. Board of Educ. of the City of Newark, 349 N.J. Super. 455, 462 (App. Div. 2002) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990) (emphasis added)), "Reconsideration is a matter within the sound discretion of the court, to be exercised in the interest of justice." D'Atria, 242 N.J. Super. at 401.

The prime function of a motion for reconsideration is to highlight "the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." R. 4:49-2. Reconsideration is not a vehicle through which to raise new arguments or to simply reprise the initial motion. Guido v. Duane Morris LLP, 202 N.J. 79, 87 (2010) (citing Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521, (2008)). Furthermore, parties are not entitled to reconsideration on the basis of information that was available but overlooked. Fusco, 349 N.J. Super. at 462; see also Morey v. Borough of Wildwood Crest, 18 N.J. Tax 335, 341 (App. Div. 1999), cert. denied, 163 N.J. 80 (2000). Finally, "[a] litigant should not seek reconsideration merely because of dissatisfaction with a decision of the Court." D'Atria, 242 N.J. Super. at 401. A motion for reconsideration is not an opportunity for a second bite at the apple. It is not a mechanism for unhappy litigants to attempt once more to air their positions and re-litigate issues already decided. See Michel v. Michel, 210 N.J. Super. 21 (Ch. Div. 1985) (per Judge Krafte).

**b. Plaintiffs' Motion for Reconsideration**

Plaintiffs contend that the Court overlooked the structure of the assessment scheme and certain controlling laws when coming to its decision.

i. Voting and participation rights

Plaintiffs first argue that because the 2017 amendments to N.J.S.A. 45:22A-43, et seq. give property owners in a common interest community voting and participation rights, the Court must clarify its ruling to ensure that Lake property owners are similarly entitled to these rights under LPPOA's proposed two-tiered membership structure. Plaintiffs particularly point to N.J.S.A. 45:22A-45.1, which was amended in 2017, in relevant part, to:

[e]stablish that all unit owners are members of the [common interest community] association and provide basic election participation rights for certain residents of common interest communities, including the right of resident owners in good standing to nominate any unit owner in good standing as a candidate for any position on the executive board, run, appear on the ballot, and be elected to any executive board position, in every executive board election, and for those rights to apply regardless of the date of a community's establishment . . . .

[N.J.S.A. 45:22A-45.1(g)(1)].

Nothing in the Court's October 7, 2019 Statement of Reasons specifically instructs Defendants to pursue a certain fee assessment structure or finds that Defendants' proposal fails to conform to legal requirements. LPPOA, as manager of the Lake, is in the best position to determine how best to collect necessary fees within the boundaries proscribed by statute. A judicial determination approving or disapproving of a certain voting structure was never pled in Plaintiffs' Amended Complaint, nor was it before the Court for consideration in Plaintiffs' Motion for Summary Judgment. The Amended Complaint only sought, among other things, declaratory judgment

pursuant to N.J.S.A. 2A:16-53, which is intended to “settle and afford relief from the uncertainty and insecurity with respect to rights, status and other legal relations.” N.J.S.A. 2A:16-51. However, Plaintiffs never specifically requested that the Court approve of a voting plan under Defendants’ proposed two-tiered assessment structure. Plaintiffs’ Motion for Summary Judgment makes no mention of Plaintiffs’ concerns over voting rights. The Court, therefore, declines to opine as to the adequacy of Defendants’ easement assessment proposal or Defendants’ “intent” in implementing a two-tiered approach, other than to state that Defendants must comply with all applicable laws, including N.J.S.A. 45:22A-45.1.

ii. Authority to charge fees under privity of contract

Plaintiffs also argue that LPPOA has no right to assess attorney’s fees, late fees, interest and liens because there is no privity of contract if Plaintiffs are mere easement holders. Plaintiffs allege that because Defendants classify Lake residents in the lower tier of the fee assessment structure as having “easement holder” privileges, while residents in the higher tier have “recreation membership privileges,” is it possible to imply that “easement holders” could not be classified as members of the association.

Again, this is a tangential issue that was never pled in Plaintiffs’ Amended Complaint. The Amended Complaint only requested judgment against Defendants, in relevant part, “[d]eclaring and adjudging the nature and extent of Plaintiff’s rights and obligations; specifically barring the LPPOA from implementing and collecting the Assessment.” Am. Compl., pg. 10. It never asked the Court to void any existing contractual obligations between Plaintiffs and Defendants. In the October 7, 2019 Statement of Reasons, the Court already found that LPPOA is a common interest community. In such communities, it is typical for there to be a “sharing of expenses for maintenance among the residents” based on equity, and regardless of alleged privity of contract

issues. Mulligan v. Panther Valley Property Owners Ass'n, 337 N.J. Super. 293, 311 (App. Div. 2001). Similarly, Plaintiffs' Motion for Summary Judgment put forth two primary arguments: (1) that Defendants lack the authority to charge a mandatory assessment in order to maintain the Lake; and (2) that the case must be dismissed as moot if Governor Murphy signs Bill 5043. Plaintiffs never asked for a declaration that, should the Court rule in Defendants' favor, Defendants must assess fees in a certain way, or that Plaintiffs must be granted a certain type of membership in the association. It is not for the Court to determine precisely how Defendants should carry out their assessment scheme, including exactly how any fines and fees are to be collected, when Plaintiffs never requested that specific relief.

iii. Imposition and notice of liens

Finally, Plaintiffs allege that LPPOA had no authority to impose liens on Lake properties prior to the date of the Resolution, October 19, 2016, because property owners lacked adequate notice of a debt. Plaintiffs contend that the "right to use . . . the waters of Lake Parsippany for bathing, boating and fishing," as stated in the easement language found in Lake residents' chains of title, does not provide sufficient notice that a lien could possibly result, and further that equitable liens must have some basis in contract.

As noted above, Plaintiffs' Amended Complaint never requested that the Court prevent Defendants from imposing any liens on residents' properties. As stated in Section ii, supra, Plaintiffs only sought a declaratory judgment, "[d]eclaring and adjudging the nature and extent of Plaintiff's rights and obligations; specifically barring the LPPOA from implementing and collecting the Assessment." Am. Compl., pg. 10. Plaintiffs failed to request that the Court make any specific judicial determinations regarding or to void any alleged liens. In addition, Plaintiffs' July 2, 2019 Memorandum of Law in Support of Their Motion for Summary Judgment does not

even raise the enforceability of liens as an issue. Plaintiffs argue that “[t]here is no basis to record a lien against the lot owners,” but Plaintiffs do not specifically seek to void any liens, and no evidence was presented to the Court that any liens were ever filed. To the extent that Plaintiffs are seeking to prevent liens from being imposed on residents, such a determination is premature because there is no evidence that liens were even recorded on any of the Lake properties. The Court, therefore, declines to further entertain how Defendants may choose to impose equitable liens on Lake residents’ properties.

### III. CONCLUSION

Plaintiffs’ Motion for Reconsideration is **DENIED**. A conforming Order accompanies this Statement of Reasons.