

Court of Appeals, State of Michigan

ORDER

Tuscany Grove Association v Sergio Gasperoni

Docket No. 314663

LC No. 2012-003369-CH

Kathleen Jansen
Presiding Judge

Pat M. Donofrio

Deborah A. Servitto
Judges

The Court orders that the motion for peremptory reversal pursuant to MCR 7.211(C)(4) is DENIED for failure to persuade the Court of the existence of manifest error requiring reversal and warranting peremptory relief without argument or formal submission.

The motion to strike the motion for peremptory reversal is DENIED AS MOOT.

The motion for sanctions is GRANTED. MCR 7.216(C)(1)(b); MCR 7.219(I). In its motion for peremptory reversal, plaintiff represented that it had obtained the approval of 66 2/3 percent of its members before bringing the underlying suit. However, as the record makes clear, plaintiff did not actually obtain the consent of 66 2/3 percent of its members until after the circuit court granted defendant's motion for summary disposition on November 1, 2012. Because plaintiff has "grossly disregarded the requirements of a fair presentation of the issues to the [C]ourt," MCR 7.216(C)(1)(b), defendant is awarded its actual costs and reasonable attorney fees in an amount to be determined by the circuit court. This shall include any amounts expended by defendant in (1) responding to plaintiff's motion for peremptory reversal, and (2) filing its motion to strike plaintiff's motion for peremptory reversal and for sanctions. We REMAND this matter to the circuit court for a calculation of defendant's actual damages and reasonable attorney fees consistent with this order. MCR 7.216(C)(2). Within 35 days of the Clerk's certification of this order, the circuit court shall determine the amount of sanctions payable by plaintiff and shall enter an order to that effect. The sanctions shall be payable by plaintiff within 14 days of the entry of the circuit court's order.

The motion to extend the time for filing a response to defendant's motion to strike the motion for peremptory reversal is DENIED.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on—

JUL 26 2013

Date

Jerome W. Zimmer Jr.
Chief Clerk