

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

FRANK R. GUIDIDAS, et al.,

Plaintiffs,

v.

Case No. 8:11-cv-2545-T-30TBM

**COMMUNITY NATIONAL BANK
CORPORATION, et al.,**

Defendants.

ORDER

THIS CAUSE comes before the Court upon Defendants' Partial Motion to Reconsider (Dkt. 31) and Plaintiffs' Response in opposition (Dkt. 36). The Court, having considered the motion, response, and being otherwise advised of the premises, concludes that the motion should be denied.

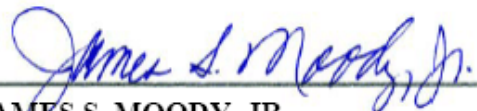
On May 10, 2012, the Court granted in part and denied in part Defendants' Motion to Dismiss/Alternative Motion for Summary Judgment (Dkt. 29). Specifically, the Court dismissed Counts II and III of Plaintiffs' complaint without prejudice. With respect to Count I, the Court concluded that Plaintiffs stated a cause of action against Defendants for breach of their fiduciary duties to prudently and loyally manage the ESOP Plan in violation of ERISA, in light of the Eleventh Circuit's May 8, 2012 opinion in *Lanfear v. Home Depot, Inc.*, 679 F.3d 1267 (11th Cir. 2012).

Defendants' arguments in favor of reconsideration are not new; they were included in Defendants' Motion to Dismiss/Alternative Motion for Summary Judgment and considered by the Court at that time. In short, Defendants are not entitled to a second bite of the apple. The Court concluded that Plaintiffs' allegations (with respect to Count I) were sufficient to state a claim against Defendants. The Court also concluded that summary judgment was premature.¹ To the extent that Defendants disagree with Plaintiffs' allegations, they can address these issues at the dispositive motion stage.

It is therefore **ORDERED AND ADJUDGED** that:

1. Defendants' Partial Motion to Reconsider (Dkt. 31) is DENIED.
2. Defendants' Motion for Leave to File Reply (Dkt. 39) is DENIED as moot.
3. Defendants shall file an Answer to Plaintiffs' Complaint within ten (10) days of this Order.

DONE and ORDERED in Tampa, Florida on July 24, 2012.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record

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¹ The Court did not "misapprehend" the "precise counters of Defendants' argument in favor of summary judgment" as Defendants suggest in the instant motion. There is simply no support for Defendants' position that the Court apply the arbitrary and capricious/abuse of discretion standard. This case is not a claim for benefits.