

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR CALHOUN COUNTY

JORDAN BUILDING GROUP, LLC, a
dissolved Michigan Limited Liability
Company, TICHENOR, INC, a Michigan
Corporation, and HEATH TICHENOR,

Plaintiffs,

v.

CASE NO. 2017-1406-CB

WEATHER VANE RENOVATIONS, INC. D/B/A
WEATHER VANE ROOFING, a Michigan
Corporation, BRADFORD SHELL, LLC., a
Dissolved Michigan Limited Liability Company,
and RYAN BRADFORD,

Defendants,

WEATHERFROOF EXTERIORS, LLC, a
Michigan Limited Liability Company, and
KRISTOPHER POAG,

Defendants,

ARCHITECTURAL DESIGN AND MARKETING, LLC,
a Michigan Limited Liability Company, and
RICHARD SCHUEMANN,

Defendants,

RICK FETT,

Defendant.

Keefe Braxton (P78985)
Attorney for Plaintiff
220 Bagley St. Suite 514
Detroit, Michigan 48226
(313) 818-3604

Andrew C. Burrows (P81083)
Ashley J. Prew (P77655)
Attorneys for Defendants, Weather
Vane Renovations, Inc. Bradford
Shell, LLC and Ryan Bradford
10299 Grand River Road, Suite 1
Brighton, MI 48116

Mark Van Epps (P33068)
Attorney for Kristopher Poag and
Weatherproof Exteriors, LLC
318 N Water St.
Owosso, MI 48867
(989) 723-6777

HUMBARGER, ZEBELL, PARKS & BIEBERICH, PC
By: David L. Zebell (P39939)
Attorney for Defendants Richard Schuemann and
Architectural Design and Marketing, LLC
3 Heritage Oak Lane
Battle Creek, MI 49015
(269) 979-3990

OPINION AND RULING

This matter comes before the Court pursuant to the Plaintiff's Motion For Reconsideration Pursuant to 2.119(f) Of The Order Granting (sic) Defendants, Richard Schuemann and Architectural Design and Marketing, LLC. Summary Disposition Pursuant to MCR 2.116(C)(8) (hereinafter referred as "Motion for Reconsideration).

It should be noted that the within Motion For Reconsideration does not address the other Defendants not delineated in the Motion, so the Court will confirm the Ruling to the identified Defendants.

The Court will note as well that Plaintiff throughout their Motion and Brief confuse the dates of the Motions. Plaintiff incorrectly states that the Motions for Summary Disposition were heard on 7-20-2017. The Motions were heard on 7-17-2017 and 7-24-2017 respectively.

The Defendants that are not addressed in the Motion For Reconsideration filed a Motion of Summary Disposition with supporting documents on 6-23-2017. This Motion was noticed for 7-17-2017.

The Court moved a Status Conference from 7-3-2017 to 7-17-2017 to not inconvenience the parties with multiple court appearances.

Defendants Schuemann and Architectural Design and Marketing LLC filed a Motion to Dismiss and For More Definite Statement on 6-25-2017 noticed for hearing on 7-24-2017.

The Summary Disposition Motions of the Defendants other than Schuemann and Architectural Design and Marketing LLC were heard on 7-17-2017.

Plaintiffs filed an Answer to Defendant Weather Vane Renovations, Inc., Bradford Shell, LLC., Ryan Bradford and Kris Poag and Weatherproof Exteriors, LLC Motion for Summary Disposition on 7-19-2017, two days after the hearing was held.

Plaintiffs did not file an answer to Defendants', Schuemann and Architectural Design, Motion to Dismiss.

Plaintiffs in their Motion For Reconsideration states the an individual for whom Plaintiffs counsel had guardianship died on 6-30-2017. This individual's funeral was held on 7-15-2017.

Plaintiffs state further that there were other individuals that Plaintiff's counsel maintains guardianship that died as well.

Plaintiff's counsel states that he contacted opposing counsel on Friday 7-17-2017 (sic) without success. Counsel again contacted opposing counsel on 7-20-2017 and was informed that counsel was in court on this case for the Motion For Summary Disposition.

During the 24 days that the Motion For Summary Disposition was pending and the 20 days the Status Conference was noticed Plaintiff's counsel never contacted the Court. Plaintiff's counsel failed to attend either of the Motion hearings of the Defendants and failed to attend the Status Conference ordered by the Court.

In the Motion For Reconsideration, at paragraph 10, Plaintiff states, "That the Court granted Defendant's Motion for Summary disposition (sic) due to Counsel failure to appear on July 20, 2017 (sic), despite Counsel's efforts.:

The Court considers counsel's efforts as woefully inadequate. During the pending 24 day period Plaintiff's counsel did not even attempt to contact the Court.

The Court did not grant Summary Disposition "due to Counsel failure to appear".

The Court granted Summary Disposition for the reasons set forth on the record. The substantive reasons reflect that Defendants were entitled to Summary Disposition.

A motion for reconsideration is governed by MCR 2.119(F)(3) which provides: "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."

The court has accepted the Black's Law Dictionary definition of "palpable" as "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." Estate of Stanley Luckow, 291 Mich App 417 (2011).

“It is up to the moving party to show palpable error that would lead to different disposition in the case.” UM Regents v. Titan Ins. Comp., 484 Mich 852 (2009).

As stated in People v Walters, 266 Mich App 341(2005) the “palpable error’ provision of MCR 2.119(F)(3) is not mandatory and only provides guidance to a court about when it may be appropriate to consider a motion for rehearing or reconsideration.”

Additionally, as the court stated in Smith v. Sinai Hospital of Detroit, 152 Mich App 716, 723 (1986), “If a court wants to give a ‘second chance’ to a motion it has previously denied, it has every right to do so, ...”

The Plaintiff’s Motion For Reconsideration is denied. Defendant shall prepare an Order Denying the Motion and present it pursuant to MCR 2.602(B)(3).

August 15, 2017

HON. BRIAN K. KIRKHAM CIRCUIT JUDGE