STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND
BUSINESS COURT

BET-LUCY HOLDINGS, LLC,

Plaintiff,

v

Case No. 21-187817-CB
Hon. Michael Warren

VICTOR MOSES HOMES, LLC, et al.,

Defendants,

and

VICTOR MOSES HOMES, LLC,

Counter-Plaintiff,

v

BET-LUCY HOLDINGS, LLC,

Counter-Defendant.

OPINION AND ORDER DENYING MOTION FOR RECONSIDERATION AND FOR RELIEF FROM JUDGMENT

At a session of said Court, held in the County of Oakland, State of Michigan April 7, 2022

PRESENT: HON. MICHAEL WARREN

I

Before the Court is Bet-Lucy Holdings, LLC's Motion for Reconsideration and for Relief from Judgment. The Plaintiff seeks reconsideration of the March 9, 2022 Opinion

and Order granting Victor Moses Homes, LLC's ("VMH") motion for sanctions (striking of answer and entry of default) for failure to comply with Court order and for entry of default judgment, and relief from the Judgment entered on March 11, 2022. The March 9, 2022 Opinion and Order (1) struck Bet-Lucy's answer to the Counter-Claim, (2) entered a default against Bet-Lucy and (3) ordered that a default judgment would be entered against Bet-Lucy as requested after Bet-Lucy engaged in serial violations of the Rules of Court involving discovery as well as the orders of the Court and failed to engage counsel.[1] The Court having reviewed the subject Motion and Response[2] otherwise being fully informed in the premises, hereby dispenses with oral argument as it would not assist the Court in rendering a decision. MCR 2.119(F)(2).

At stake is whether a motion for reconsideration should be granted when there has been no showing of a palpable error by which the Court and parties were misled requiring a different disposition to correct such palpable error, and the circumstances do

[1] The March 9, 2022 Opinion and Order states that no timely response to the underlying motion was filed and for that reason Bet-Lucy's arguments were deemed abandoned.

[2] VMH's Amended and Supplemented Response was filed without leave and will not be considered. No Rule of Court permits the filing of "amended" and "supplemental" responses. The time for filing a single response is clearly specified by the Rules of Court, and VMH's attempt to circumvent the orderly processes clearly set forth in the Rules of Court is unwarranted. Apparently VMH believes it can somehow retroactively cure a defective response - but filings are not dress rehearsals. VMH is not entitled to file responses seriatim on the same subject matter until one sticks. See, e.g., *Mobile MRI Staffing, LLC v Auto-Owners Ins Co*, unpublished opinion of the Court of Appeals dated July 15, 2021, (Docket No. 353873) p. 2, 3 (affirming this Court when finding "Defendants have also failed to present any support for their theory that they were permitted to file successive motions to establish the reasonableness of the attorney fees incurred. . . . The circuit court did not state that defendants were permitted to file successive motions to establish the reasonableness of the attorney fees incurred, and defendants did not file their amended motion for the determination and enforcement of sanctions until after the 28-day deadline had expired. For these reasons, our analysis will be limited to the evidence presented by defendants in support of their initial motion for the determination and enforcement of sanctions").

not justify allowing a "second chance" to argue matters that were or could have been argued at the time of the motion? Because the answer is "no," and for the reasons articulated in the Response and incorporated herein, the Motion is denied.

II

A motion for reconsideration must demonstrate "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. MCR 2.119(F)(3). A motion that merely presents the same issues as ruled upon by the Court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cason v Auto Owners*, 181 Mich App 600, 605 (1989). There is no abuse of discretion in denying a motion resting on a legal theory or facts which could have been pled or argued prior to the trial court's original order. *Charbeneau v Wayne County Gen'l Hosp,* 158 Mich App 730, 733 (1987).

Having carefully reviewed and considered the Motion, the Motion (1) fails to demonstrate palpable error by which this Court and the parties were misled, (2) fails to show that a different disposition of the motion must result from correction of any error, and/or (3) raises arguments that could have been or were argued prior to this Court's original March 9, 2022 Opinion and Order had a timely response been filed. In short, the Motion merely presents, expressly and by reasonable implication, the same issues as previously ruled upon by this Court.

Without limiting the foregoing, despite Bet-Lucy's argument, the March 9, 2022 Opinion and Order does not assert that Bet-Lucy did not respond to the underlying motion. Rather, it states "no timely Response having been filed." Indeed, Bet-Lucy's response to the underlying motion was filed on March 8, 2022 at 4:02 p.m., in violation of MCR 2.119(C)(2) and less than seventeen (17) hours before the hearing on the motion. Bet-Lucy filed its response after this Court's clerk sent correspondence advising counsel that the Court had dispensed with oral argument and an order reflecting the Court's decision would be forthcoming.[3] The Court was not required to consider the untimely filed response. MCR 2.119(C)(2).

Furthermore, Bet-Lucy cites no authority that typographical errors in an order or a miscalculation of the age of the case are palpable errors compelling reconsideration. "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). The fact remains that Bet-Lucy committed wanton and flagrant violations of the Rules of Court applicable to discovery and as this Court's orders, and failed failure to obtain counsel as required under Michigan law.[4] In any event, although there may be occasions to exercise discretion and allow a second chance to argue a position, such an occasion is not presented in the instant circumstances. As

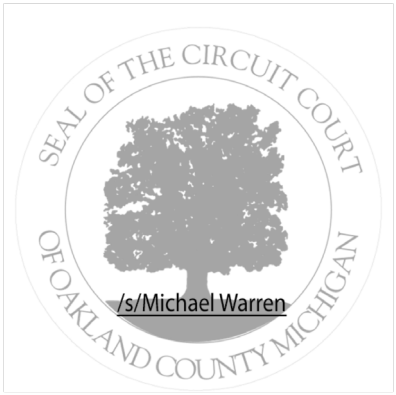
[3] Judicial Court Clerk Michael Adams' e-mail correspondence was sent on March 8, 2022 at 2:50 p.m.

[4] An appearance by Bet-Lucy's newly retained counsel was not filed until March 8, 2022 despite that the October 27, 2021 Order states that Bet-Lucy had 28 days to procure new counsel.

reconsideration of the March 9, 2022 Opinion and Order is not warranted, the March 11, 2022 Judgment remains valid.[5]

ORDER

Based on the foregoing Opinion, the Motion for Reconsideration and for Relief from Judgment is **DENIED**.



[5] Notwithstanding the foregoing, Bet-Lucy's request for relief under MCR 2.612(C)(1)(a) because of alleged multiple material mistakes and under MCR 2.612(C)(1)(c) based on the alleged inaction of David Moses is not supported by authority. Again, "Trial Courts are not the research assistants of the litigants; the parties have a duty to fully present legal arguments for its resolution of their dispute." *Walters v Nadell*, 481 Mich 377, 388 (2008). By failing to cite appropriate authority or cogently apply analysis of the same, the Defendants' arguments are deemed abandoned. *Houghton v Keller*, 256 Mich App 336, 339-340 (2003) ("failure to properly address the merits of [one's] assertion of error constitutes abandonment of the issue;" a party "may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . nor may he give issues cursory treatment with little or no citation of supporting authority" (citations omitted)).