STATE OF MICHIGAN
IN THE BERRIEN COUNTY TRIAL COURT
CIVIL DIVISION – BUSINESS COURT
811 Port Street, St. Joseph, MI 49085 • (269) 983-7111 • businesscourt@berriencounty.org

STEVE JACKSON, individual,
LAURA JACKSON, individual, and
WMT & D, INC. f/k/a WEST MICHIGAN TOOL & DIE CO., a Michigan Corporation,

File No. 2020-0083-CB
HON. DONNA B. HOWARD

Plaintiffs,

v

BULK AG INNOVATIONS, LLC, **d/b/a WEST MICHIGAN TOOL & DIE,** a foreign Limited Liability Company, and
O. VICTOR MOWATT, individual.

Defendants.

John David Gardiner (P72641)
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O. Victor Mowatt
Self-Represented Individual Defendant
8715 S. Kentwood Ave.
Chicago, IL 60619-7031

**** CORRECTED ****

OPINION AND ORDER REGARDING PLAINTIFFS' MOTION FOR RECONSIDERATION

At a session of the Berrien County Trial Court, held
On the 20th day of April, 2021, in the City of
St. Joseph, Berrien County, Michigan

This matter comes before the Court on Plaintiffs' motion for reconsideration of part of this Court's grant of Default Judgment against Defendants, entered January 28, 2021. At a hearing on or about September 8, 2020, the Court granted Plaintiffs' motion for default judgment against Defendant Bulk AG Innovations, but reserved on damages, and due to notice issues could not proceed with the default judgment against individual Defendant Mowatt. Subsequently, at a re-noticed hearing on or about December 14, 2020, the Court likewise granted Plaintiffs' motion for default judgment against Defendant Mowatt. At Plaintiffs' request, the Court continued to reserve

on the amount of damages to give Plaintiffs another opportunity to submit supplemental documentary evidence, including any affidavits, as to the amount of loss or damages incurred which were not included as part of the motion submissions then before the Court (Order, 12/14/20). Defendants did not request further hearing on damages, despite the Court giving them an opportunity to do so (Order, 12/14/20).

Plaintiffs submitted further documentation to the Court record on or about January 4, 2021, along with a proposed default judgment to be entered against Defendants. Between the attachments to Plaintiffs' complaint, and motion and brief for default judgment, and their supplement filings pursuant to the December 14, 2020 Order, the record before the Court was comprised of hundreds of pages of evidentiary documents, including balance sheets, summary accountings, and testimonial evidence by sworn affidavit. After final review of the record, the Court entered the default judgment on January 28, 2021, in the total judgment amount of $207,587.14 – *i.e.* $180,000.00 in damages; $550.64 in costs/expenses; $27,036.50 in attorney fees (Judgment, 1/28/21, ¶ 3).

Plaintiffs do not dispute those amounts awarded by the Court for damages, court costs or attorney fees. Rather, Plaintiffs now move for reconsideration asserting that "this Court has committed palpable error" as to its finding of insufficient proof of additional damages for Defendants' failure to repay a cash and accounts receivable loan and their related claim for treble damages (Brief, 2/19/21, pp 1-2).

The Michigan Court Rule that governs motions for rehearing or reconsideration, specifically MCR 2.119(F)(3), explicitly states that:

> a motion for rehearing or reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonably 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.

For the purpose of this Rule, the term "palpable" is defined as easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, or manifest mistake. However, a mere difference in opinion regarding the equities of the matter does not constitute a palpable error. *Luckrow v Luckrow*, 291 MichApp 417; 805 NW2d 453 (2011).

In this case, Plaintiffs do not articulate or demonstrate what submitted evidence was missed by the Court or where there was a "readily visible" or "noticeable" mistake by the Court. In fact, if anything, Plaintiffs acknowledge that there was not sufficient evidence presented to the Court to support additional damages, in their concession that "additional evidence is necessary for the Court to enter a judgment." (Brief, 2/19/21, p 2) Consequently, under MCR 2.119(F)(3) Plaintiffs' motion for reconsideration can be properly denied on those issues already raised. As previously ruled, beyond the $207,587.14 in total judgment, Plaintiffs failed on what was presented to the Court that they were entitled to any additional damages due to any Court oversight, mistake or error; let alone palpable error.

Furthermore, there is no explanation why after the Court conducted two hearings on Plaintiffs motion for default judgment, and adjourned judgment entry, specifically to allow for Plaintiffs' to supplement the record, that there is now good cause to reopen the record and again have the Court re-evaluate the same matter another time. Plaintiffs cite to *In re Estate of Moukalled,* 269 MichApp 708; 714 NW2d 400 (2006); and *Smith v Sinai Hosp of Detroit,* 152 MichApp 716, 722-723; 394 NW2d 82 (1986), in support of their request for a "second chance" even in the absence of a palpable error, albeit without further argument or analysis (Brief, 2/19/21, p 3). However, both cases merely highlight the broad discretion of a court to allow a "second chance." In the *Moukalled* case, the Court of Appeals noted that "MCR 2.119(F)(3) 'allows the court considerable discretion in granting reconsideration to correct mistakes, to preserve judicial economy, and to minimize costs to the parties.'" *Id.*, *quoting*, *Kokx v Bylenga,* 241 MichApp 655, 659; 617 N.W.2d 368 (2000).

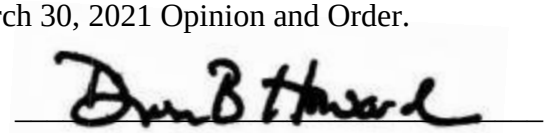
Again, here there is no showing of a mistake (by the Court or anyone else for that matter), that reconsideration preserves judicial economy, or that there is a limitation of costs to the parties which would warrant this Court to exercise its discretion to rehear this judgment. Without good cause shown or even an explanation as to why Plaintiffs should be entitled to another "bite at the apple" on claims already adjudicated and decided by this Court after several hearings, and review of the substantial record, the Court finds that reconsideration is not warranted under these circumstances.

In light of the foregoing, and being otherwise advised in the premises, this Court finds no palpable error and no good cause or other explanation demonstrated by Plaintiffs to move the Court for an exercise of its discretion to reconsider the entry of the valid judgment, and therefore;

IT IS HEREBY ORDERED that Plaintiffs' motion for reconsideration under MCR 2.119(F) is **DENIED**.

IT IS FURTHER HEREBY ORDERED that this Corrected Order is entered *nunc pro tunc* to March 30, 2021, pursuant to MCR 2.612(A)(1) as the correction was solely to the mistaken case number listed in the caption of the March 30, 2021 Opinion and Order.

DATED: April 20, 2021



HONORABLE DONNA B. HOWARD
Berrien County Trial Court – Civil Div.