

STATE OF MICHIGAN
IN THE CIRCUIT COURT FOR THE COUNTY OF KENT

JJACK, LLC,

Plaintiff,

Case No. 22-06672-CBB

Hon. Curt A. Benson

v.

OPINION AND ORDER

PB2020, LLC and
PETER BULTSMA,

REC'D & FILED

APR 17 2024

Defendants.

HON. CURT A. BENSON
17TH CIRCUIT COURT

INTRODUCTION

On March 4, 2024, the court issued Findings of Fact and Conclusions of Law (hereafter, “opinion”) after a February 19-20, 2024, bench trial. On March 18, 2024, Jjack, LLC (hereafter, “Jjack”) filed a Motion for Reconsideration.

STANDARD OF REVIEW

A party moving for reconsideration must establish that (1) the trial court made a palpable error and (2) a different disposition would result if the court corrects the error. MCR 2.119(F)(3); *Luckow v Luckow*, 291 Mich App 417, 426; 805 NW2d 453 (2011). “Palpable” is defined as easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, or manifest. *Luckow*, 291 Mich App at 426.

Generally, “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.” MCR 2.119(F)(3); *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). However, the trial court retains discretion to provide parties a “second chance” even if the motion for reconsideration presents nothing new for the court to consider. *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012).

DISCUSSION

Jjack filed this action against PB2020 and Peter Bultsma alleging that the various transactions executed between the parties were usurious. It alleged, and offered credible evidence in support, that the transactions were in fact loans, and that the effective interest rates of those loans exceeded Michigan’s criminal usury statute, MCL 438.41, by a considerable extent.

Before and during trial, the parties' positions were clear-cut: PB2020 argued that the amended grow agreement and the two promissory notes at issue are integrated and not usurious on their face. Therefore, parol evidence is inadmissible and the contracts must be enforced as written.¹

Jjack argued to the contrary. As stated above, Jjack argued that, notwithstanding the plain language of the agreements, the transactions were really loans, and usurious loans at that. Of course, to prove usury, Jjack urged the court to look beyond the plain language of the instruments to figure out the true nature of the transaction. But, critically to Jjack's argument, the court, in Jjack's view, was only allowed to look at a little bit of parol evidence - only the evidence that supported Jjack's argument.

As set forth in its opinion, the court rejected both arguments. To be sure, had Jjack failed to present sufficient evidence (by referring to parol evidence during Summary Disposition briefings and hearings), that the transactions were in fact illegal under Michigan law, the court would have summarily granted judgment in PB2020's favor based primarily on the integration clauses. But Jjack convinced the court that the legality of the contracts was a genuine question of material fact. Thus, the court ordered a trial on the merits.

At trial, the question was straightforward: were the transactions usurious?

[I]n determining whether a particular transaction is usurious, the entire transaction must be considered. The substance of the transaction, rather than the form, governs. Otherwise, the effect of usurious transactions may be avoided by other paper or security for the indebtedness.

Heberling v. Palmer's Mobile Feed Serv., Inc., 119 Mich. App. 150, 154, 326 N.W.2d 404, 406 (1982). See also, *In re Allen-Morris*, 523 B.R. 532, 539 (E.D. Mich. 2014).

Jjack insists that the court must not consider "the entire transaction," but only bits and pieces of it: consider more than the form, Jjack argues, but something less than the substance. The court declined to do so at trial. It declines to do so now that trial is over.

¹ It further argued, and the court ultimately agreed, that, to the extent the court must look beyond the plain language of the instruments, the amended grow agreement and notes represented an investment, not a loan, and were not therefore subject to Michigan's usury laws.

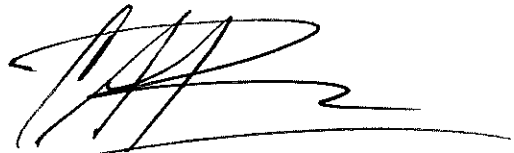
CONCLUSION

Jjack's motion for reconsideration merely presents the same issues already ruled on by the court. Jjack has failed to identify anything that can be characterized as palpable error.

The motion is DENIED.

IT IS ORDERED.

Dated: April 17, 2024
at Grand Rapids, Michigan.



Honorable Curt A. Benson