STATE OF MICHIGAN
IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA
SPECIALIZED BUSINESS DOCKET
414 Washington Street
Grand Haven, Michigan 49417
616.846.8315
* * * * *

AARON SMITH, an individual, and **CINDY DEVENPORT,** an individual,
Plaintiffs,

v

GREG MAKI, individually, and **AGRI-MED REAL ESTATE, LLC,** a Michigan limited liability company, **AGRI-MED PARK PLACE, LLC,** a Michigan limited liability company, **AGRI-MED EXIT 9, LLC,** a Michigan limited liability company, and **AGRI-MED GRAND HAVEN REAL ESTATE, LLC,** a Michigan limited liability company,
Defendants.
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OPINION AND ORDER ON DEFENDANT'S MOTION FOR RECONSIDERATION
File No. 25-8125-CB
Hon. Jon Van Allsburg

At a session of said Court, held in the Ottawa County Courthouse in the City of Grand Haven, Michigan, on the 18th day of June, 2025,
PRESENT: HON JON A. VAN ALLSBURG, CIRCUIT JUDGE

On May 12, 2025, in a written Opinion and Order,[1] this Court denied defendants' motion for change of venue. In their present motion, defendants move this Court to reconsider its decision. For the reasons stated below, defendants' motion is denied.

Law and Analysis

MCR 2.119(F)(3) states the following:

> 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

[1] *Smith, et al v Maki, et al*, Opinion and Order of the Ottawa County 20th Circuit Court, entered May 12, 2025 (Docket No. 2025-8125-CB).

> misled and show that a different disposition of the motion must result from correction of the error. (emphasis added).

To meet the burden of proof in a motion for reconsideration, the party bringing the motion must establish that "(1) the trial court made a palpable error and (2) a different disposition would result from correction of the error."[2] Palpable is defined as "easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest."[3]

In the case at bar, defendants argue that this Court applied the incorrect legal standard in its May 12, 2025 Opinion and Order. Specifically, defendants argue that this Court only referenced MCR 2.222, which addresses venue convenience, without referencing MCR 2.223(A)(1), which addresses whether venue is improper. However, while this Court did not cite MCR 2.223(A)(1), it did examine whether venue is proper or improper (in addition to discarding defendants' inconvenience argument). That is, this Court disagreed with defendants' *action based on tort* argument in their supplemental brief, citing MCL 600.1629, and agreed with plaintiffs' counter argument that the "existence of the fraud claim, based on the same facts as the breach of contract claim, [does not] make[] this 'an action based on tort.'"[4]

Moreover, in their Supplemental Response, plaintiffs assert that the fraud claim is a mere extension of their breach of contract claims: "The very first sentence of Plaintiffs' Complaint describes the nature of this dispute: 'This case arises out of promises made and reduced to writing by Defendant Greg Maki, the member in control of Defendant Agri-Med, LLC, and the other Entity Defendants …'"[5] In other words, "the actions are premised on contractual agreements between plaintiffs and defendant[s]. . . . [A]bsent a contract, plaintiffs would have no viable cause of action against defendant[s]."[6] In short, "because plaintiffs' fraudulent misrepresentation claim, in

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[2] *Luckow v Luckow*, 291 Mich App 417, 426; 805 NW2d 453 (2011) (citations omitted).

[3] *Id.* (quotations and citations omitted).

[4] Plaintiffs' Supplemental Response, p 8. This Court's May 12, 2025 Opinion and Order contains a clerical error. The *Id.* cited in footnote 10 of that Opinion and Order was supposed to refer to footnote 8, which referenced Plaintiffs' Supplemental Response, not footnote 9, which cited *Chilingirian v City of Fraser*, 182 Mich App 163, 165; 451 NW2d 541 (1989). *Chilingirian* addressed the "inconvenience" argument contained in the previous section of the May 12, 2025 Opinion and Order.

[5] Plaintiffs' Supplemental Response, p 2 (quoting Complaint, ¶ 1).

[6] *Ferguson v Pioneer State Mutual Insurance Company*, 273 Mich App 47, 53; 731 NW2d 94 (2006).

substance, is factually indistinguishable from their breach of contract claim, [this Court] conclude[s] that MCL 600.1621 applies to each claim."[7]

Defendants argue that "the Plaintiffs – not the Defendants – bear the burden of proof in establishing that venue is proper. Specifically, "'[w]here a defendant challenges venue, the plaintiff has the burden of establishing proper venue. The choice of venue must be based on fact not mere speculation.'"[8] This Court finds that plaintiffs have met this burden. Accordingly, in its May 12, 2025 Opinion and Order, this Court correctly found that MCL 600.1629 does not apply, and venue is proper in Ottawa County pursuant to MCL 600.1621(a): "The county in which a defendant ... has a place of business, or conducts business...."

Conclusion

For the reasons stated above, this Court finds that it did not make a palpable error in its May 12, 2025 Opinion and Order denying defendants' motion for change of venue.[9] Accordingly, defendants' motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: June 18, 2025

Hon. Jon Van Allsburg, Circuit Judge

[7] *Findling v Kloian*, unpublished opinion of the Court of Appeals, entered August 13, 2009 (Docket No. 283397) (2009 WL 2477615 at *7).

[8] Defendants' Motion for Reconsideration Brief, p 4 (quoting *id.* at *6).

[9] Because defendants do not meet the first prong of MCR 2.119(F)(3), it is unnecessary for this Court to analyze the second prong.