

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

JAY S. TURNER,

Plaintiff/Defendant,

v.

J & J SLAVIK, INC and J. RONALD SLAVIK,

Defendants/Counter-Plaintiffs.

Case No: 19-175801-CB
Hon. Robert Young (ret)
(Visiting Judge)

Hon. Victoria Valentine
(Assigned Judge)

Court of Appeals
Docket No:370564

OPINION AND AMEND JUDGMENT
RE: DEFENDANTS' APRIL 18, 2024 MOTION FOR RELIEF FROM
THE MARCH 28, 2024 JUDGMENT

At a session held in the Courthouse in
Pontiac, Oakland County, Michigan on **8/23/2024**

PRESENT: ROBERT YOUNG, Circuit Judge

INTRODUCTION

This matter is before the Court on Remand from the Court of Appeals. On August 13, 2024, the Court of Appeals entered the Remand Order directing the Court to decide Defendants/Counter-Plaintiffs J & J Slavik, Inc (“J&J”) and J. Ronald Slavik’s (“Slavik”) (hereinafter collectively referred to as (“Defendants”)) motion for relief from paragraph 1 of March 28, 2024 Judgment. By an order entered August 14, 2024, the Court directed¹ that the parties may file a supplemental briefing, which they did.

The Court carefully reviewed the briefing and relevant pleadings and concludes that the

¹ Prior to entering the order, the Court reviewed the court record and found that Defendants filed the motion at issue on April 18, 2024; Plaintiff/Counter-Defendant Jay S. Turner (“Plaintiff”) filed a response to the motion at issue on April 19, 2024; and the Court entered an ordering denying Defendants’ motion because it lacked jurisdiction to decide the motion since Defendants had simultaneously filed a claim of appeal. The remand order provided the Court with jurisdiction to decide Defendants’ motion on the merits. The Court found it appropriate to permit the parties to supplemental the filed motion and response in lieu of a hearing.

decision process would not be significantly aided by oral argument. Therefore, pursuant to MCR 2.119(E)(3),² the Court dispenses with oral arguments and issues its opinion and order based on its review of the briefing and relevant pleadings.

For the reasons set forth below, Defendants' motion for relief from paragraph 1 of March 28, 2024 Judgment is GRANTED.

RELEVANT PROCEDURAL BACKGROUND

This matter is more than two decades old and this is the third³ trial between these parties and their controversy has been appealed⁴ multiple times including an application for leave to file an appeal as well as a bankruptcy stay entered during the pendency of this litigation.

On August 12, 2019, Plaintiff filed a Complaint against Defendants asserting (1) violation of Michigan Business Corporation Act by failing to send financial statements to shareholders (MCL 450.1487(1)) (Count I); (2) violation of Michigan Business Corporation Act by refusing to allow shareholder to review corporate records (MCL 450.1487(2) and (6)) (Count II); (3) breach of fiduciary duty by Slavik (Count III); and (4) minority shareholder oppression (Count IV).⁵ Relevant to this motion, Plaintiff included a requested attorney's fees pursuant to MCL

² MCR 2.119(E)(3) states that "[a] court may, in its discretion, dispense with or limit oral arguments on motions, and may require the parties to file briefs in support of and in opposition to a motion."

³ The prior actions are no longer pending. The docket numbers for the prior actions were Oakland County Circuit Court Case Nos. 04-058583-CZ and 07-092782-CZ and the now-retired Honorable Denise Langford Morris presided over the prior actions, which had been filed before the creation of the Business Court.

⁴ The parties appealed the prior actions, and those appeals are also no longer pending. The prior appeals to the Michigan Court of Appeals were Court of Appeals Docket Nos. 281050, 283933, 289818, 303243, and 313936, and to the Michigan Supreme Court was Michigan Supreme Court Docket No. 149673. During its pendency, this matter has been before the Court of Appeals on application for leave to appeal: (1) Court of Appeals Docket No. 351352 (Court of Appeals dismissed based on the parties' agreement stipulating to dismiss in an order dated December 23, 2019) and (2) Court of Appeals Docket No. 356273 (Court of Appeals denied the application for leave to appeal in an order dated March 31, 2021). The current action also involved an order for administrative closing due to a bankruptcy stay entered August 26, 2022 and a stipulated order to reopen after a bankruptcy stay after Slavik voluntarily dismissed his bankruptcy case.

⁵ By leave granted by the trial court, Defendants filed a second amended countercomplaint (January 7, 2021) alleging (1) breach of contract (Count I) and (2) declaratory relief (Count II). By an order entered January 12, 2022, the Honorable Martha Anderson (assigned judge) granted Plaintiff's motion for summary disposition pursuant to MCR 2.116(C)(7) as to the second amended countercomplaint and dismissed the second amended countercomplaint in its entirety and with prejudice.

450.1478(5) as to Counts I and II. The bench trial commenced on December 4, 2023 and concluded on December 7, 2023. The Court granted Defendants' motion for a directed verdict as to breach of fiduciary duty by Slavik (Count III). Here, Defendants now move to set aside the \$200,000 attorney fee award granted because it was not authorized by the provisions of the Michigan Business Corporation Act that Plaintiff relied upon and, absent a statutory authorization, the Common Law bars an award of attorney fees under the "American Rule". For the reasons set forth below, the Court agrees and concludes that its award of attorney fees must be reversed.

APPLICABLE LAW

Defendants filed their motion pursuant to MCR 2.119(F).⁶ A motion for reconsideration must demonstrate a palpable error by which the Court and the parties have been misled. MCR 2.119(F)(3). The court rules state:

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.

MCR 2.119(F)(3). A "palpable" error is defined as "[e]asily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, manifest." *Estate of Luckow v Luckow*, 291 Mich App 417, 426 (2011). 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). It is not an abuse of discretion to deny a motion if it raises legal theories or facts, which could have been argued prior to the court's original order. *See Charbeneau v Wayne Co Hosp*, 158 Mich App 730 (1987).

⁶ Defendants also filed the motion pursuant to MCR 2.612(C)(1)(f). For the reasons stated in the analysis section, the Court decided the motion based on MCR 2.119(F)(3) and did not reach a determination as to MCR 2.612(C)(1)(f).

ANALYSIS

Defendants challenge the Court's authority to award reasonable attorney's fees pursuant to MCL 450.1478(5) because that provision (nor any other provision of the Michigan Business Corporation Act) authorizes an award of attorney fees under the circumstances set forth in the Complaint. Alternatively, Defendants request that the Court reduce the attorney fee award to a nominal amount.

Plaintiff disagrees and argues that an award of attorney's fees is mandatory under MCL 450.1487. Plaintiff asserts that he spent considerable fees trying to compel Defendants to produce records, to obtain the records from other sources (e.g., J&J's accountants), and to seek discovery orders to secure depositions from individuals with knowledge about the company records. Plaintiff acknowledges that an order for production of records would not have resulted in the production of records that Defendants had hidden or destroyed. Plaintiff further argues that the attorney fee awarded was an appropriate amount and claims that it would be difficult for him to segregate the fees applicable to only Count I and II of the Complaint since the cover-up and litigation between the parties has been on-going for years.

Having reviewed the motion, response, supplemental briefs, and the court record, the Court concludes that Defendants demonstrated a palpable error by which the Court and the parties have been misled and a different disposition must result from correction of the error.⁷ Because there is no basis for awarding attorney fees under MCL 450.1478(5), the Court finds that it is not necessary to consider Defendants' alternative grounds for relief.

⁷ Under the Shareholders Chapter of the Michigan Business Corporation Act, the statute allows an award of attorney's fees in two instances: to wit, MCL 450.1487(5) and MCL 450.1497. MCL 450.1497 authorizes costs, including attorney's fees, incurred in a derivative action if it finds that the proceeding has resulted in a substantial benefit to the corporation. That provision is not applicable here because Plaintiff's case is not a derivative action.

In his complaint, Plaintiff alleges violations of MCL 450.1487(1) (failure to send financial statements) (Count I) and violations of MCL 450.1487(2) and (6) (failure to permit a shareholder to review the books and “right to inspect”) and seeks attorney’s fees pursuant to MCL 450.1487(5), which states as follows:

If the *court orders* inspection of the records demanded under subsection (3) or (4), it shall also order the corporation to pay the shareholder’s or director’s costs, including reasonable attorney fees, incurred to obtain the order unless the corporation proves that it failed to permit the inspection in good faith because it had a reasonable basis to doubt the right of the shareholder or director to inspect the records demanded. (Emphasis added.)

Questions of statutory interpretation are reviewed under long-established principles:

The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. We may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, the words of a statute provide the most reliable evidence of its intent. [*Spectrum Health Hosps v Farm Bureau Mut Ins Co of Mich*, 492 Mich 503, 515 (2012) (cleaned up).]

And “express mention in a statute of one thing implies the exclusion of other similar things.”

Bradley v Saranac Comm Sch Bd of Ed, 455 Mich 285, 289 (1997).⁸

The language of MCL 450.1487(5) is clear and unambiguous. It provides that the Court shall order the corporation to pay the shareholder’s costs (including reasonable attorney’s fees) incurred to obtain an order for inspection of the records. Further, the language expressly states that the court must order inspection of the records as demanded under MCL 450.1487(3) or (4). Here, there was no order to inspect J&J’s records and Plaintiff made no demand pursuant to MCL

⁸ This doctrine (the expression of one thing implies the exclusion of others) “is a rule of statutory interpretation meant to help ascertain the intent of the Legislature”—a court’s ultimate goal in statutory interpretation—and “does not subsume the plain language of the statute when determining the intent of the Legislature.” *Tuggle v Dep’t of State Police*, 269 Mich App 657, 663 (2005). “It has been described as a rule of construction that is a product of logic and common sense. The doctrine characterizes the general practice that when people say one thing they do not mean something else.” *Detroit City Council v Detroit Mayor*, 283 Mich App 442, 456 (2009) (cleaned up) (applying the doctrine of *expressio unius est exclusio alterius* and declining to read language into the statute).

450.1487(3) or (4). Instead, there was a request to review the records pursuant to MCL 450.1487(2) and (6).

The legislature elected to limit attorney's fees to only the situations where the court entered an order to inspect based on a demand pursuant to MCL 450.1487(3) and (4), which negates the authority to order attorney fees based on violations of the other sections. *Bradley*, 455 Mich (the "express mention in a statute of one thing implies the exclusion of other similar things"). As such, the Court finds that Defendants demonstrated that a *palpable* error exists which shows that a different disposition of the motion must result from correction of the error.

Accordingly, Plaintiff is not entitled to costs, including reasonable attorney's fees, pursuant to MCL 450.1487(5) because the Court did not enter an order to direct J&J to permit Plaintiff to inspect the records nor did Plaintiff demand the opportunity to inspect the records under MCL 450.1487(3) or (4).

AMENDED FINAL JUDGMENT

Based on the foregoing analysis,

IT IS HEREBY ORDERED that:

1. Defendants' motion for relief from Paragraph 1 of the March 28, 2024 Judgment is GRANTED and the paragraph 1 of the Final Judgment dated March 28, 2024 is STRUCK.
2. The remaining paragraphs in the Final Judgment dated March 28, 2024 remain in effect: to wit,
 - A. a judgment is entered in favor of Plaintiff Jay Turner and against both Defendant J&J Slavik, Inc. and Defendant J. Ronald Slavik on Count IV, namely, Defendants shall purchase Plaintiff's 250 shares of common stock of J&J Slavik, Inc. for \$25,000 plus simple, non-compounded interest on that principal from May, 1992 to the date hereof at the rate of 7% per annum; and
 - B. the Court having previously dismissed Plaintiff's Count III, any other claims of Plaintiff and any other relief sought by Plaintiff are dismissed and denied.

This Opinion and Order and its Amended Final Judgment decides the matter for which the Court of Appeals remand. Therefore, the matter is returned to the Court of Appeals.

IT IS SO ORDERED.

Date: 8/23/2024

/s/ *Robert Young*
HON. ROBERT YOUNG (retired)
VISITING CIRCUIT COURT JUDGE
VBK