

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF GRAND TRAVERSE

BOSTON FINANCE GROUP, LLC, a Florida
Limited liability company,

Plaintiff,

v

File No. 12-28975-CK
HON. PHILIP E. RODGERS, JR.

POWER-TEC MANUFACTURING, LLC, a
Michigan limited liability company, U.S. TOOL
& ENGINEERING, LLC, a Delaware limited
liability company, REVSTONE INDUSTRIES,
LLC, a Delaware limited liability company,
REVSTONE TOOL & ENGINEERING, LLC,
a Delaware limited liability company, f/k/a Omega
TG, LLC, POWER-TEC MANUFACTURING, LLC,
a Delaware limited liability company, SALEEN, LLC, a
Delaware limited liability company, REVSTONE
TRANSPORTATION, LLC, a Delaware limited
liability company, f/k/a Cerion, LLC, CONTECH
FORGINGS, LLC, a Delaware limited liability
company, and SPARA, LLC, a Delaware limited
liability company,

Defendants.

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**DECISION AND ORDER DENYING DEFENDANTS' MOTION
FOR RECONSIDERATION AND MOTION FOR RELIEF FROM JUDGMENT**

On March 8, 2012, the Plaintiff filed a Motion for Summary Disposition. On April 9, 2012, the Plaintiff's motion was granted as there was no material issue of fact that the

Defendants collectively and individually had defaulted on promissory notes and breach other agreements between the parties. The Defendants filed a Motion for Reconsideration of the Entry [sic] of the April 9, 2012 Judgment and a Motion for Relief from the April 9, 2012 Judgment with the Court on April 30, 2012. Subsequently, the Court issued a Pre-Hearing Order on May 10, 2012, requesting a responsive brief and Defendants' reply. The Court having now reviewed all documents submitted, dispenses with oral argument, pursuant to MCR 2.119(E)(3), and issues this written decision and order for the reasons stated herein.

The standard for reviewing motions for reconsideration is codified at MCR 2.119(F), entitled Motions for Rehearing and Reconsideration, and reads in pertinent part, as follows:

(3) 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.

The Defendants argue that the Court was misled as to the specific amount of damages awarded because the Plaintiff neither provided tangible or persuasive evidence of damages, nor evidence of how the damages and interest were calculated. Defendants also allege that the Plaintiff's summary spreadsheet contained multiple errors, the accuracy of the calculations used to determine interest and late fees has not been verified and the late fees charged were unreasonable and therefore, void and unenforceable.¹

The Plaintiff argues that the amount of damages, interest and late fees, along with the methodology used in calculating said damages, interest and late fees, were addressed in the Affidavit of Jonathan Golden ("Golden Affidavit") that was filed with Plaintiff's Motion for Summary Disposition. The Plaintiff also notes that the Golden Affidavit was not rebutted by the Defendants in their written responses. The Plaintiff states that evidence of judgment damage calculations were provided in the Golden Affidavit and further, that Mr. Golden was present during the April 9, 2012 hearing, he was available to testify and could have been subjected to examination by the Defendants.

The Court finds that the Defendants' Motion for Reconsideration presents the same issues previously ruled on by the Court, either expressly or by reasonable implication. The Court does

¹ Defendants cite *Curran v Williams*, 352 Mich 278, 282; 89 NW2d 602 (1958).

not find that a palpable error has been demonstrated and that a different disposition of the motion must result from the correction of an error.²

The court rule, MCR 2.612 *et seq.* addressing relief from a judgment or order, states:

On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

- (a) Mistake, inadvertence, surprise, or excusable neglect.
- (b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under MCR 2.611(B).
- (c) Fraud (intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.
- (d) The judgment is void.
- (e) The judgment has been satisfied, released, or discharged; a prior judgment on which it is based has been reversed or otherwise vacated; or it is no longer equitable that the judgment should have prospective application.
- (f) Any other reason justifying relief from the operation of the judgment.

Relief from judgment on the basis of mistake, inadvertence or otherwise should be limited to extraordinary circumstances where the failure to set aside the court's final determination will result in substantial injustice.³ As a basis for relief from judgment under MCR 2.612(C)(b), the evidence, not simply its materiality, must be newly discovered; the evidence cannot be merely cumulative; the newly discovered evidence must be such that it is likely to change the result and the party moving for relief from judgment must be found to have not been able to produce the evidence with reasonable diligence.⁴ Before relief from judgment may be granted under MCR 2.612(C)(f), it must be shown that the reason for setting aside the judgment does not fall in any of the other specifically enumerated categories, that substantial rights of the opposing party will not be detrimentally affected, and that extraordinary circumstances exist mandating the setting aside the judgment.⁵ Ill-advised or careless decisions by counsel and tactical errors by counsel are not grounds for granting relief from a final judgment or order.⁶ Furthermore, a party's 'change of heart' is normally insufficient to justify the setting aside of certain judgments and orders.⁷

² MCR 2.119(F)(3).

³ *Lark v Detroit Edison Co*, 99 Mich App 280; 297 NW2d 653 (1980).

⁴ *South Macomb Disposal Auth v American Ins Co*, 243 Mich App 647; 625 NW2d 40 (2000).

⁵ *Heugel v Heugel*, 237 Mich App 471; 603 NW2d 121 (1999).

⁶ *Limbach v Oakland Co Bd of Co Rd Comm'rs*, 226 Mich App 389; 573 NW2d 336 (1997).

⁷ *Groulx v Carlson*, 176 Mich App 484; 440 NW2d 644 (1989).

Parties to a contract can agree and stipulate in advance as to the amount to be paid in compensation for loss or injury which might result in the event of a breach of the agreement and such a stipulation is enforceable if the amount stipulated is reasonable with relation to the possible injury suffered.⁸ The Defendants' claim that the late fees assessed are "disguised interest" and are akin to liquidated damages. Thus, Defendants argue that the reasonableness of the late fees must be analyzed under Michigan's usury statute.

However, the Court previously noted at the summary disposition hearing that the contracts which are the subject of this litigation must be interpreted within their four corners. The Defendants, with the benefit of counsel, negotiated and knowingly entered into the contracts which were 'high risk loans.' The Court indicated that the Defendants willingly engaged in high risk financial transactions, knowing and understanding there were consequences for delinquent payments. Based on the plain language of the contracts, the Court held that the 'late fees' assessed cannot be construed as interest. Therefore, the Defendants' continued argument that the 'late fees' are usurious is meritless and cannot support a request for relief from judgment.

The Court granted the Plaintiff's Motion for Summary Disposition because the motion was supported by an affidavit detailing the interest and late payment fees as to each Defendant and provided current calculations for money owed by each Defendant. Defendants did not respond to or rebut the Plaintiff's calculations. The Defendants had sufficient opportunity to review, analyze and consider the calculation of late fees and interest, however, the Defendants submitted the proposed final judgment to the Court without making any objections to the calculations and amounts. Defendants are not entitled to relief from the judgment on the basis of mistake, inadvertence or surprise because they have not demonstrated extraordinary circumstances where failing to set aside the judgment results in substantial injustice.

Therefore, Defendants' Motion for Reconsideration of the Entry [sic] of the April 9, 2012 Judgment and Motion for Relief from the April 9, 2012 Judgment are denied.

IT IS SO ORDERED.

HONORABLE PHILIP E. RODGERS, JR.
Circuit Court Judge

⁸ *Curran, supra.*