

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

SECURITY TECHNOLOGIES, INC, et al,

Plaintiffs,

v

BRMC EQUITIES, LLC, et al,

Defendants.

Case No. 2013-135199-CK
Hon. Wendy Potts

Consolidated with
Case No. 2013-134695-CK

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION
PURSUANT TO MCR 2.119(F)(3) OR IN THE ALTERNATIVE REQUEST FOR HEARING
ON THE ISSUE OF DAMAGES

At a session of Court
Held in Pontiac, Michigan

On

JUL 31 2015

Defendant BRMC Equities moves the Court to reconsider its opinion and order determining the amount of damages Plaintiff Security Technologies, Inc. owes BRMC. The Court has discretion to grant or deny reconsideration. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733; 405 NW2d 151 (1987). Reconsideration is warranted if a party identifies a palpable error by which the Court and the parties have been misled and shows that a different disposition must result from correction of that error. MCR 2.119(F)(3).

BRMC first complains that the Court did not conduct a hearing on damages and asks the Court to do so. However, as the Court noted in its damages opinion, the parties agreed to submit the damages issue on brief. Although the Court indicated that it might need oral argument on the damages submissions, the parties did not reserve the right to an evidentiary hearing and the Court

did not state that it intended to conduct a hearing. Because there was no assurance that BRMC would have an opportunity to present testimony or evidence at a hearing, it was incumbent on BRMC to present admissible evidence of its damages claims with its brief, and its failure to do so was not the Court's error.

BRMC next asserts that the Court erred in relying on BRMC's admission that Security Technologies paid \$80,000 towards the BRMC loan. BRMC argues that the Court should have considered other evidence that contradicted its admission. However, a fact admitted under the request for admission rule is "conclusively established unless the court on motion permits withdrawal or amendment of an admission." MCR 2.312(D)(1). Because BRMC did not move to set aside its admissions before the damages issue was submitted to the Court, the admission served to conclusively establish that Security Technologies paid \$80,000 to BRMC's loan. BRMC fails to demonstrate palpable error in the Court's conclusion that this fact was established and not subject to refutation by other evidence.

In its final assertion of error, BRMC claims that the Court erred in failing to award it attorney fees. BRMC correctly notes that the loan agreement allowed for attorney fees, and Security Technologies did not dispute this fact. However, the Court denied BRMC's request for attorney fees, not based on its entitlement to claim fees, but because it failed to present evidence of the fees incurred. Moreover, while BRMC's reconsideration motion now presents billing statements of various attorneys, BRMC still fails to present admissible evidence that the claimed fees were incurred to collect on the debt at issue in this case. Other than Mr. Cyril Hall, none of the attorneys for whom BRMC is claiming fees are attorneys of record in this case, and there is no affidavit or other proof of the purpose for the fees incurred. Further, BRMC does not present

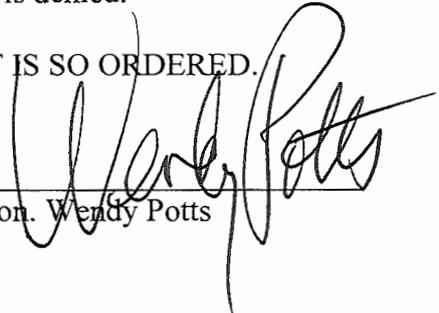
any invoices or affidavits to verify the amount of Mr. Hall's fees. Thus, BRMC fails to show any error in the Court's conclusion that it failed to prove it incurred fees in collecting on the debt.

Nonetheless, because BRMC now appears to have some evidence to support its claim for fees, the Court will give BRMC another opportunity to make its case for fees. Within 14 days, BRMC may submit a supplemental brief limited to five pages along with affidavits or other admissible evidence that the fees it is claiming were incurred to collect on the BRMC loan and that the fees are reasonable. If BRMC is able to make a prima facie showing on its fee claim, the Court will allow Security Technologies 14 days to present a supplemental brief limited to five pages on whether the fees were incurred for collecting on the BRMC loan and whether the fees claimed are reasonable.

For all of these reasons, the Court will reconsider its decision denying BRMC's attorney fee claim. In all other respects, the motion for reconsideration is denied.

Dated: JUL 31 2015

IT IS SO ORDERED.



Hon. Wendy Potts