

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

NORTHFIELD COMMONS ASSOCIATES, L.L.C.,

Plaintiff,

v

Case No. 2014-139285-CK

Hon. Wendy Potts

MOHAMED BASSIM TABBAKH, et al,

Defendants.

OPINION AND ORDER RE: DEFENDANT'S MOTION FOR RECONSIDERATION
OF THIS COURT'S NOVEMBER 12, 2014 OPINION AND ORDER

At a session of Court
Held in Pontiac, Michigan

On

MAR 02 2015

Defendants Mohamed Bassim Tabbakh, move the Court to reconsider its decision denying their motion for relief from judgment. 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).

Defendants argue the Court erred by failing to consider whether the lease was effectuated. However, that argument was or could have been raised before the Court decided the motion for relief from judgment. Defendants cannot demonstrate palpable error based on arguments that were or could have been raised in the original motion. *Churchman v Rickerson*, 240 Mich App 223, 233; 611 NW2d 333 (2000). The fact that Defendants disagree with this

Court's reasoning or legal conclusions does not amount to palpable error. *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003).

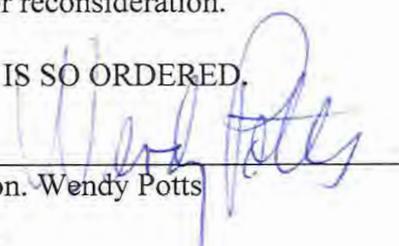
Defendants' motion for relief from judgment, filed on October 13, 2014, never raised the issue of whether the lease was effectuated. In fact, Defendants did not raise that issue until November 12, 2014 when they filed an unsolicited supplemental motion. Defendants did not seek leave to supplement the arguments in their original motion, and Plaintiff was not given any opportunity to respond to the supplemental brief.

Even if Defendants had raised the argument sooner, they fail to show how it would result in a different disposition. Defendants contend that effectuating the lease was contingent on obtaining the necessary permits. However, the contingency clause in paragraph 8 of the lease states that "[t]enant must have approval from local governing bodies prior to lease execution." Therefore, if the lease was not effectuated, it was due to Defendants' failure to obtain the required certificate of occupancy. Moreover, as the Court noted in its bench opinion, Defendants materially breached the lease in other aspects including failing to complete architectural and construction specifications, and pay rent and other expenses.

For all of these reasons, Defendant fails to show palpable error in the Court's summary disposition opinion, and the Court denies the request for reconsideration.

Dated: **MAR 02 2015**

IT IS SO ORDERED.



Hon. Wendy Potts

JH