STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

COMPUTER BUSINESS WORLD, LLC,
a Michigan limited liability company,

Plaintiff,

v

Case No. 15-146321-CK
Hon. Wendy Potts

SAMIR JAMIL, an individual, et al.,

Defendants.

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OPINION AND ORDER RE: DEFENDANTS JOHN GUMMA AND JENNIFER GUMMA'S MOTION FOR RECONSIDERATION

At a session of Court
Held in Pontiac, Michigan
On

AUG 19 2016

The matter is before the Court on Defendants John Gumma and Jennifer Gumma's Motion for Reconsideration. On June 15, 2016, the parties appeared for oral argument on Defendants John Gumma and Jennifer Gumma's motion for summary disposition pursuant to MCR 2.116(C)(8). At that time, the Court did not expressly grant or deny Defendants' motion for summary disposition, but granted Plaintiff an opportunity to amend its complaint. On June 30, 2016, Plaintiff filed a second amended complaint that the Gummas claim only asserts a single additional claim against the Gummas. The Gummas now argue that Plaintiff failed to include any specificity in the second amended complaint, and they request that the Court

reconsider its prior decision and enter an order dismissing them from the case. The Court dispenses with oral argument pursuant to MCR 2.119(F)(2).

MCR 2.119(F) governs Motions for Rehearing or Reconsideration. The decision whether to grant or deny reconsideration is discretionary. MCR 2.119(F)(3); *Charbeneau v Wayne County General Hosp*, 158 Mich App 730, 733 (1987). MCR 2.119(F)(3) provides, in relevant part:

> [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 Gumma Defendants assert that the parties and the Court were misled when Plaintiff promised it could state a cause of action against the Gummas with specificity. Pursuant to MCR 2.116(I)(5), "[i]f the grounds asserted are based on subrule (C)(8), (9), or (10), the court shall give the parties an opportunity to amend their pleadings as provided by MCR 2.118, unless the evidence then before the court shows that amendment would not be justified." *Id.* The court rules provide that the parties *shall* be given an opportunity to amend if the grounds asserted are based on (C)(8). At the time the Court allowed Plaintiff to amend, the evidence before the Court did not show that an amendment would not be justified, and Defendants did not argue that Plaintiff's request to amend was not justified. Defendants now argue that Plaintiff failed to allege any specifics in the second amended complaint, and request that they be dismissed from the case.

Defendants' argument that Plaintiff's subsequently filed second amended complaint was not pled with particularity is not properly before the Court on a motion for reconsideration. If Defendants believe that the second amended complaint also fails to state a claim, Defendants can file a dispositive motion on the second amended complaint. Defendants have failed to demonstrate a palpable error and show that a different disposition of their motion must result from correction of the error. Accordingly, Defendants John Gumma and Jennifer Gumma's motion is denied.

IT IS SO ORDERED.

Dated: AUG 19 2016

Hon. Wendy Potts