

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

**XPERT TECHNOLOGIES, INC.,**

**Plaintiff/Counter-Defendant,**

**v**

**Case No. 15-147137-CK  
Hon. Wendy Potts**

**LEGACY GROUP LIGHTING, LLC,  
d/b/a Creative Lighting Solutions,**

**Defendant/Counter-Plaintiff.**

**OPINION AND ORDER RE: DEFENDANT'S MOTION FOR REHEARING OR  
RECONSIDERATION AND/OR FOR RELIEF FROM JUDGMENT**

At a session of Court  
Held in Pontiac, Michigan  
On

SEP 21 2016

This matter is before the Court on Defendant's Legacy Group Lighting, LLC's motion for reconsideration pursuant to MCR 2.119(F) and/or motion for relief from judgment pursuant to MCR 2.612(C). On August 8, 2016, the Court granted summary disposition in favor of Plaintiff Xpert Technologies, Inc. Pursuant to the Opinion and Order issued on August 8, 2016, the Court entered a judgment in favor of Xpert in the amount of \$199,680.00 and dismissed Legacy Group Lighting, LLC's counterclaim in its entirety. On August 17, 2016, the Court entered a Final Judgment in this matter. Subsequently, on September 7, 2016, Defendant filed the instant motion requesting the Court reconsider the basis for its Final Judgment against Defendant or

requesting the Court grant it relief from the Final Judgment. 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; 405 NW2d 151 (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.

Defendant's motion for reconsideration requests that the Court reconsider the basis for the Final Judgment. The basis for the Final Judgment was the Opinion and Order that the Court entered on August 8, 2016 granting summary disposition in favor of Plaintiff, entering a judgment in favor of Xpert in the amount of \$199,680, and dismissing Legacy's counterclaim in its entirety. "[A] motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 21 days after the entry of an order deciding the motion." MCR 2.119(F)(1). Defendant's motion for reconsideration is untimely as it was not filed until September 7, 2016, more than 21 days after entry of the order deciding the motion. *Id.*

Even if the Court were to accept and consider Defendant's late motion, Defendant fails to demonstrate palpable error warranting reconsideration. MCR 2.119(F)(3). All of Defendant's arguments were or could have been raised before the Court entered the August 8, 2016 Opinion and Order. Defendant cannot demonstrate grounds for reconsideration by reiterating arguments

that were raised and rejected in the Court's decision on the original motion. *Churchman v Rickerson*, 340 Mich App 223, 233; 611 NW2d 333 (2000). The fact that Defendant disagrees with the Court's reasoning or conclusions does not amount to palpable error. *Herald Co v Tax Tribunal*, 258 Mich App 78, 83; 669 NW2d 862 (2003). Because Defendant fails to demonstrate palpable error in the Court's decision, the motion for reconsideration is denied.

Defendant also filed its motion under MCR 2.612(C). This Court has discretion to grant relief from judgment under certain circumstances. MCR 2.612(C)(1); *South Macomb Disposal Authority v American Ins Co*, 243 Mich App 647, 655; 625 NW2d 40 (2000). MCR 2.612(C) provides, in relevant part:

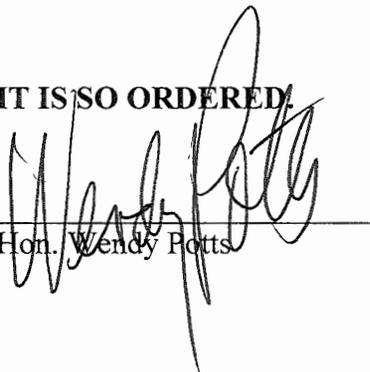
(1) On motion and on just terms, the court may relieve a party or the legal representative of a party from a final judgment, order, or proceeding on the following grounds:

- (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.

Defendant argues that the motion is justified because there exists a genuine issue of material fact. Defendant does not argue which provision of MCR 2.612(C) is applicable. “A party may not merely announce a position and leave it to [the] Court to discover and rationalize the basis for the claim.” *National Waterworks, Inc v International Fidelity & Surety, Ltd*, 275 Mich App 256, 265; 739 NW2d 121 (2007). Defendant has not demonstrated that relief from judgment is justified under MCR 2.612(C)(1).

Accordingly, Defendant’s Motion for Rehearing or Reconsideration and/or for Relief from Judgment is hereby denied in its entirety.

Dated: **SEP 21 2016**

**IT IS SO ORDERED.**  
  
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Hon. Wendy Potts