STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

XL BYRON CENTER, LLC,

Plaintiff,

vs.

JETZ SERVICE CO, INC., d/b/a
COMMERCIAL COIN LAUNDRY
SYSTEMS, AMERICAN COIN LAUNDRY,
and CROWN COIN METER COMPANY,

Defendant.
_____/

Case No. 13-09503-CKB

HON. CHRISTOPHER P. YATES

ORDER DENYING DEFENDANT'S MOTION FOR RECONSIDERATION

On February 14, 2014, the Court issued an Opinion and Order Denying Defendant's Motion to Set Aside Default and Granting Plaintiff's Motion to Enter Default Judgment. Defendant Jetz Service Co, Inc. ("Jetz") now requests reconsideration of that opinion and order. As a general rule, a motion for reconsideration may only be granted if the moving party demonstrates "a palpable error by which the court and the parties have been misled and show[s] that a different disposition of the motion must result from correction of the error." MCR 2.119(F)(3). To be sure, "courts are permitted to revisit issues they previously decided, even if presented with a motion for reconsideration that offers nothing new to the court." Hill v City of Warren, 276 Mich App 299, 307 (2007). But a motion for reconsideration does not automatically entitle the losing party to another turn at bat on a motion. Instead, MCR 2.119(F)(3) strongly suggests that something in the motion must impel the Court to conclude that its chosen outcome is so erroneous that it must be rectified.

Here, Defendant Jetz first contends that the Court must grant reconsideration because the Court did not adequately explain its grounds for determining that the lease was a license. But this argument

entirely misses the point of a default. "In Michigan, it is an established principle that 'a default settles the question of liability as to well-pleaded allegations and precludes the defaulting party from litigating that issue.'" Kalamazoo Oil Co v Boerman, 242 Mich App 75, 78-79 (2000); citing American Central Corp v Stevens Van Lines, Inc, 130 Mich App 507, 512 (1981) ("Entry of a default is equivalent to an admission by the defaulting party as to all well-pleaded allegations."). Here, Plaintiff XL Byron Center, LLC ("XL Byron") obtained a clerk's entry of default on December 19, 2013, when Jetz failed to answer within the 21-day period prescribed by MCR 2.108(A)(1). That default established liability against Jetz and "estopped [Jetz] from litigating issues of liability." Kalamazoo Oil Co, 242 Mich App at 79. Thus, the Court properly entered a default judgment at the behest of XL Byron after denying Jetz's motion to set aside the default.*

Defendant Jetz next contends that the Court must grant reconsideration because the Court failed to address the choice-of-law and forum-selection clause contained in the parties' agreement. To be sure, "'parties may agree, even in advance of litigation, to submit to the personal jurisdiction of a particular forum.'" Lease Acceptance Corp v Adams, 272 Mich App 209, 219 (2006). But forum-selection and choice-of-law clauses do not necessarily divest other courts of personal jurisdiction if jurisdiction is not challenged. See, e.g., Turcheck v Amerifund Financial, Inc, 272 Mich App 341, 347 (2006) (analyzing whether to exercise or decline jurisdiction in light of forum-selection clause). Here, Jetz does not allege that it was not subject to personal jurisdiction in Michigan. Rather, Jetz contends that the Court should have declined to exercise personal jurisdiction in light of the contractual forum-selection clause. Jetz not only failed to adequately assert this argument in its motion to set aside the default and in its response

* If Plaintiff XL Byron had requested monetary relief, the Court would have set this case for an evidentiary hearing to determine the proper amount of damages. See Kalamazoo Oil Co, 242 Mich App at 79 ("a default judgment is not an admission regarding damages"). Here, however, the Court was able to issue a final order in granting XL Byron's request for a default judgment because XL Byron merely sought declaratory relief, so no damages had to be determined.

to XL Byron's request for entry of default judgment, but also now incorrectly presumes that the default had not already established liability. Thus, the Court did not commit a palpable error in denying Jetz's motion to set aside the default and granting XL Byron's request for a default judgment, so the Court must deny Jetz's motion for reconsideration.

IT IS SO ORDERED.

Dated: March 11, 2014

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge