

STATE OF MICHIGAN
IN THE 20th CIRCUIT COURT FOR THE COUNTY OF OTTAWA

414 Washington Street
Grand Haven, Michigan 49417
(616) 846-8320

COLBURN HUNDLEY, INC.,

Plaintiff,

v

**DAANE'S DEVELOPMENT COMPANY
and DAVID DAANE,**

Defendants.

OPINION AND ORDER
PARTIALLY DENYING
RECONSIDERATION
File No. 13-03373-CK

Hon. Jon A. Van Allsburg

_____ /

At a session of said Court, held in the Ottawa County
Building, in the City of Grand Haven, Michigan,
on the 17th day of March, 2014:

PRESENT: THE HON. JON A. VAN ALLSBURG, Circuit Judge

Plaintiff initiated this case to collect commission payments allegedly due and owing under commercial lease agreements. The court earlier dismissed Count V of plaintiff's First Amended Complaint, but granted summary disposition in plaintiff's favor on Counts I through IV, and denied defendants' motion for summary disposition, in an Opinion and Order filed February 17, 2014. Defendants submit that the court erred in resolving disputed factual issues not appropriate for summary disposition, and that the court erred in determining that that parties had entered into contract when there was evidence that they had not. For the reasons stated below, the court concludes that Appellant's motion should be denied, but reserves an issue raised in its supplemental motion for hearing on March 28, 2014.

The requirements and standards for a Motion for Reconsideration are found in MCR 2.119(F), which states:



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“(F) Motions for Rehearing or Reconsideration.

(1) Unless another rule provides a different procedure for reconsideration of a decision (see, e.g., MCR 2.604(A), 2.612), a motion for rehearing or reconsideration of the decision on a motion must be served and filed not later than 14 days after entry of an order disposing of the motion.

(2) No response to the motion may be filed, and there is no oral argument, unless the court otherwise directs.

(3) Generally, and without restricting the discretion of the court, 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.”

A court has considerable discretion in granting reconsideration to correct mistakes, preserve judicial economy, and minimize costs to the parties. Generally, 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. *Churchman v Rickerson*, 240 Mich App 223; 611 NW2d 333 (2000). 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. To be “palpable” is to be easily perceptible, plain, obvious, readily visible, noticeable, patent, distinct, or manifest. *Luckow Estate v Luckow*, 291 Mich App 417, 805 NW2d 453 (2011). The court may properly deny a motion for reconsideration based on a legal theory and facts which could have been pled or argued prior to the trial court's original order. *Werdlow v Detroit Policemen and Firemen Retirement System Board of Trustees*, 269 Mich App 383, 711 NW2d 404 (2006).

Plaintiff is a company that provides real estate commercial broker services. Defendant owns and is the landlord of several commercial real estate developments, including a development called “Clock Tower,” in Gaines Township, Michigan. Plaintiff claims that it was the listing agent for the Clock Tower property and is owed commissions on the lease renewals or extensions of two tenants, “Di’s Hallmark” (Hallmark) and “Pet Supplies Plus” (PSP). Defendants raise a number of objections to the court’s ruling, arguing that these contracts were not properly completed or executed, but they fail to address what the court determined was the key factor in finding a contractual obligation between the parties – ratification. This is a glaring blind spot in defendant’s arguments, and renders them irrelevant. In other words, defendants’

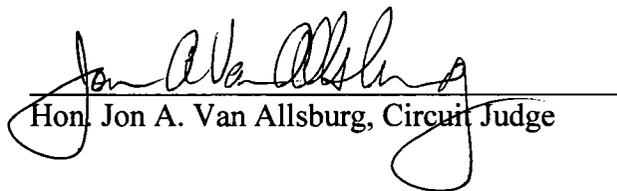
arguments may have been genuine issues at one point in time, but they were not raised on a timely basis, and are no longer material facts. Instead, the parties continued to do business together, and the contracts, which were initially adequate to form a contractual agreement, were ratified. The parties accepted the obligations and benefits created by their agreements, and did so over a period of many years.

The defendants' basic objection here is that the contractual obligation to pay commissions is not limited by any specific term. It continues as long as the tenants in question continue to occupy the defendant's property under a commercial lease. The parties could have negotiated a limit on the obligation to pay commissions to a specific number of years, or a specific number of lease renewals – but they did not.

The defendants' arguments are based on legal theories and facts which were pled and argued prior to the trial court's opinion and order on summary disposition. The court is not persuaded that it palpably erred, and defendants' motion for reconsideration is therefore DENIED. With respect to defendants' supplement to its motion for reconsideration, alleging an error in calculating the commission due under the Hallmark lease, the court will reserve that issue for oral argument by all parties at the hearing scheduled for Friday, March 28, 2014, at 10:30 a.m.

IT IS SO ORDERED.

Dated: March 17, 2014


Hon. Jon A. Van Allsburg, Circuit Judge