

STATE OF MICHIGAN

IN THE 20<sup>TH</sup> CIRCUIT COURT FOR THE COUNTY OF OTTAWA  
SPECIALIZED BUSINESS DOCKET

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

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**SCOT S. DE YOUNG,**

Plaintiff/Counter-Defendant,

v

**OPINION AND ORDER**

Case No. 14-03816-CB

Hon. Jon A. Van Allsburg

**TOWN & COUNTRY ELECTRIC, INC.,**  
a Michigan corporation, **KENNETH G. BING,**  
and **PATTI L. BING,** husband and wife,

Defendants/Counter-Plaintiffs.

\_\_\_\_\_  
Bradley J. Fisher (P64608)  
Attorney for Plaintiff/Counter-Defendant

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Ronald J. VanderVeen (P33067)  
Attorney for Defendants/Counter-Plaintiffs

At a session of said Court, held in the Ottawa County  
Courthouse in the City of Grand Haven, Michigan,  
on the 18<sup>th</sup> day of November, 2015

This action was filed by the plaintiff against his former employer and the employer's primary shareholder and his wife. The defendants counter-claimed, alleging breach of a 2005 employment agreement, by which plaintiff agreed not to compete against the defendant corporation for a period of 24 months following the termination of his employment. Plaintiff/counter-Defendant has filed a motion for reconsideration of the Court's November 3, 2015 Opinion and Order which partially granted and partially denied defendant's motion for summary disposition as to the remaining two counts of plaintiff's amended complaint.

The court partially granted defendants' motion for preliminary injunction by Opinion and Order entered December 30, 2014.<sup>1</sup> The Court previously granted summary disposition as to counts three and four of plaintiff's complaint. On November 3, 2015, the Court granted defendants' motion for summary disposition as to count one of plaintiff's first amended

<sup>1</sup> Amended and corrected by Order Granting Motion for Reconsideration, entered April 15, 2015.



complaint (seeking an accounting), and partially granted and partially denied defendants' motion for summary disposition as to count two of the amended complaint (alleging shareholder oppression).

### **Motion for Reconsideration**

Motions for reconsiderations are governed by MCR 2.119(F). MCR 2.119(F)(3) provides, in pertinent part: "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." However, the palpable error requirement merely provides guidance to the trial court in deciding motions for rehearing or reconsideration: it does not restrict the trial court's discretion to determine that a grant of reconsideration is appropriate in a particular case. *Michigan Bank-Midwest v D J Reynaert, Inc.*, 165 Mich App 630, 645-646; 419 NW2d 439 (1988). "[A] trial court has unrestricted discretion to review its previous decision." *Prentis Foundation v Karmanos Cancer Institute*, 266 Mich App 39, 52-53; 698 NW2d 900 (2005) (citing MCR 2.119(F)(3)). A motion for reconsideration may be granted even if the motion merely presents the same issues initially argued and decided. *In re Moukalled Estate*, 269 Mich App 708, 714; 714 NW2d 400 (2006).

Plaintiff asserts that the court erred in granting summary disposition as to "factual allegation #1" of count two: that defendant Town & Country Electric (T&C) demanded that plaintiff personally pay corporate expenditures made by T&C. Plaintiff argues that defendants made this demand more than once, and that defendants' "constant" repetition of the demand justifies a denial of summary disposition. The court disagrees. Defendants' demands for payment of a debt on which plaintiff and defendant Ken Bing both had contingent liability, no matter how many times repeated, does not give rise to a cause of action. Further, the demand pertains to another entity in which plaintiff and Ken Bing participated, and not to plaintiff's status as a shareholder of the defendant corporation. Therefore, as to allegation (1), the court properly granted defendant's motion.

As to factual allegation (4) of plaintiff's count two, in which plaintiff asserts that T&C wrongfully paid enormous longevity bonuses to shareholder-employees other than plaintiff, plaintiff argues the court erred in granting summary disposition on the basis that T&C's bonuses were not paid pursuant to a written corporate policy. The court had concluded that no facts were alleged to show that such bonuses were financially, substantively, or procedurally unreasonable, or to show that they were not made pursuant to "a consistently applied *written* corporate policy or procedure."

## Motion for Clarification

Plaintiff asserts that the court failed to rule upon the claim that the termination of his employment constitutes an element of his minority shareholder oppression claim. Although this basis of his claim was not specifically alleged in defendant's motion, the court concludes that plaintiff's claim is based upon MCL 450.1489(3), which was amended to specifically include "termination of employment or limitations on employment benefits *to the extent that the actions interfere with distributions or other shareholder interests disproportionately as to the affected shareholder...*" *Id.* (emphasis added). This allegation therefore has a direct bearing on plaintiff's shareholder oppression claim, and the parties have a genuine dispute over the applicability of the quoted language of the statute. Summary disposition is denied as to this claim.

Plaintiff further asserts that the court has already ruled on the terms of the covenant not to compete, and that trial on this issue should therefore be limited to the terms of the preliminary injunction determined by the court in its December 30, 2014 and April 15, 2015 orders. The court disagrees. The court's temporary orders in this case were not final rulings upon the merits.

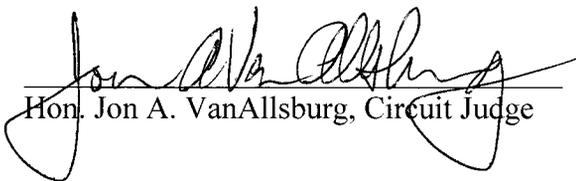
## Conclusion

Plaintiff's motion for reconsideration is DENIED.

Plaintiff's motion for clarification is GRANTED, and the court reserves for trial plaintiff's claim that the termination of his employment constitutes an element of his shareholder oppression claim, and denies plaintiff's request to limit the proofs regarding the enforceability and scope of the covenant not to compete based upon the terms of the preliminary injunction.

*IT IS SO ORDERED.*

Dated: November 18, 2015

  
Hon. Jon A. VanAllsburg, Circuit Judge