

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

MICHAEL BASSIRPOUR,

Plaintiff/Counter-Defendant,

vs.

Case No. 2014-953-CB

GLE SCRAP METAL, INC.,

Defendant/Counter-Plaintiff.

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OPINION AND ORDER

Defendant/Counter-Plaintiff GLE Scrap Metal, Inc. (“Defendant”) has filed a motion for costs and/or for reconsideration of the Court’s July 7, 2014 Opinion and Order granting Plaintiff’s motion to compel arbitration. Plaintiff has filed a response by leave of the Court.

*Factual and Procedural History*

On January 1, 2011, the parties entered into an employment agreement, which contained non-compete and non-solicitation provisions (the “Agreement”). On December 30, 2011, Plaintiff’s employment with Defendant ended.

On March 13, 2014, Plaintiff filed his complaint in this matter asserting claims for: Unpaid Sales Commissions pursuant to MCL 600.2961 (Count I); Breach of Contract (Count II); and Unjust Enrichment (Count III).

On April 18, 2014, Defendant filed its answer and affirmative defenses. On May 2, 2014, Defendant filed its amended answer and affirmative defenses, as well as a counterclaim for breach of the non-compete and non-solicitation provisions of the Agreement.

On July 7, 2014, the Court entered its Opinion and Order granting Plaintiff's motion for summary disposition and ordering the parties to arbitration pursuant to the Agreement. On July 30, 2014, Defendant filed its instant motion for costs and/or reconsideration. On August 25, 2014, the Court held a hearing in connection with the motion and took the matter under advisement. In addition, the Court granted Plaintiff leave to file a response to the motion. On September 8, 2014, Plaintiff filed his response to the motion. The Court has reviewed the materials submitted by the parties and is now prepared to render its decision.

#### *Standard of Review*

Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). 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. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F)(3) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). The grant or denial of a motion for reconsideration is a matter within the discretion of the trial court. *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 6-7; 614 NW2d 169 (2000).

#### *Arguments and Analysis*

In its motion, Defendant contends that the Court erred in finding that Plaintiff lacked knowledge of the arbitration provision in the Agreement at the time he filed his complaint in this matter. In opposing Plaintiff's request to compel arbitration, Defendant contended that Plaintiff

had waived his right to arbitration. In order to satisfy its burden of proof on that issue, Defendant was required to prove that Plaintiff had voluntarily and knowingly abandoned his right to arbitrate this matter. See *Quality Products and Concepts Co v Nagel Precision, Inc*, 469 Mich 362, 374; 666 NW2d 251 (2003). While Defendant contends that Plaintiff knew he had a right to arbitrate prior to being served with the counterclaim, the only evidence in support of its position is the fact that Plaintiff signed the Agreement in January 2011. While Defendant has cited to caselaw supporting the position that by signing an agreement the person is presumed to know the nature of the document and to understand its contents (See *Watts v Polaczyk*, 242 Mich App 600, 604; 619 NW2d 714 (2000)), the Court is not persuaded that knowledge of the terms of the agreement at the time it is signed is sufficient to form the basis of a waiver of one such right 3 years after the agreement is executed. Moreover, no evidence has been submitted establishing that Plaintiff received a copy of the Agreement, which further negates any potential responsibility to review the Agreement prior to commencing this matter. For these reasons, the Court remains convinced that Defendant failed to satisfy its burden of establishing that Plaintiff knew it had a right to arbitrate this matter prior to being served with the counterclaim.

Defendant also contends that the Court erred in finding that it had failed to establish that it had been prejudiced by Plaintiff's actions. Specifically, Defendant contends that it has incurred significant attorney fees and costs in defending against Plaintiff's assertion of a right to arbitrate. However, any attorney fees Defendant incurred after Plaintiff became aware of his right to arbitrate this matter were incurred as a result of its decision to oppose Plaintiff's request to arbitrate. While Defendant could have spared itself substantial fees and costs by stipulating, or even not opposing, Plaintiff's request, it chose to oppose the motion. Despite its substantial efforts, Defendant was unsuccessful in opposing the motion. Accordingly, the costs and fees

incurred by Defendant since receiving Plaintiff's request to arbitrate have been self-inflicted and did not result in successfully opposing the request. For these reasons, the Court remains satisfied that Defendant's request for attorney fees and costs is properly denied.

*Conclusion*

For the reasons set forth above, Defendant/Counter-Plaintiff GLE Scrap Metal, Inc.'s motion for costs and/or reconsideration is DENIED. Pursuant to MCR 2.602(A)(3), this matter REMAINS CLOSED.

IT IS SO ORDERED.

/s/ John C. Foster  
JOHN C. FOSTER, Circuit Judge

Dated: September 24, 2014

JCF/sr

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