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

ALL IN ONE BUILDERS, INC.,

Plaintiff,

vs.

JASON ELLISON,

Defendant.
_______________________________/

Case No. 16-04960-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANT'S MOTION FOR NEW TRIAL

After presiding over a four-day bench trial, the Court rendered findings of fact, conclusions of law, and a verdict in a 12-page ruling issued on September 12, 2018. Then, in December of 2018, the attorney who had represented Defendant Jason Ellison during the trial withdrew, leaving Ellison to represent himself in post-trial proceedings and on appeal. Next, Ellison filed a motion for a new trial citing no authority, but asking the Court to revisit its findings, conclusions, and verdict. Under MCR 2.611(A)(2), "[o]n a motion for a new trial in an action tried without a jury, the court may (a) set aside the judgment if one has been entered, (2) take additional testimony, (3) amend findings of fact and conclusions or law, or (4) make new findings and conclusions and direct the entry of a new judgment." The Court sees no basis to amend its findings, conclusions, and verdict.

Defendant Ellison has not identified the particular Michigan Court Rule that affords the basis for the relief that he seeks, but his motion for a new trial focuses upon three factual assertions, which he suggests are not part of the Court's findings, conclusions, and verdict. Thus, his motion appears to contend that the Court's verdict was "against the great weight of the evidence or contrary to law," see MCR 2.611(A)(1)(e), or that he has identified an "[e]rror of law occurring in the proceedings,

or a mistake of fact by the court." See MCR 2.611(A)(1)(g). Consequently, the Court shall consider Ellison's motion for a new trial on those two theories.*

Defendant Ellison's motion essentially consists of three factual assertions that he insists the Court failed to appreciate. First, Ellison asserts that Plaintiff All In One Builders, Inc. ("All In One") failed to offer "any evidence or witnesses that show Jason Ellison made $13,851 in cash withdrawals from the LMCU [*i.e.*, Lake Michigan Credit Union] Bank Account." But the Court's findings of fact include the following statements: "Ellison stated that [Jeff] Rettig told him to take money from the account as his compensation"; "Ellison withdrew more than $20,000 from the All In One account from June 5, 2013, through October 7, 2013"; and "Ellison does not deny making those withdrawals, [but] he insists that [Jeff] Rettig gave him permission to do so[.]" See Findings of Fact, Conclusions of Law, and Verdict at 2. Obviously, the Court considered the testimony and exhibits offered during the trial to arrive at those findings of fact.

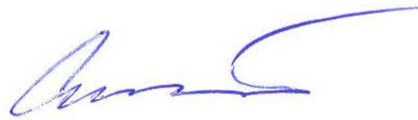
Second, Defendant Ellison argues the Court "should have included wages to Andy Feuerstein in the withdrawals per Federal Minimum Wage Laws." This argument concerns another person who worked for Plaintiff All In One and claimed to have permission to make cash withdrawals from the All In One account at Lake Michigan Credit Union. Although Feuerstein (just like Ellison) took the position that he was not properly compensated for his work by All In One, the Court is not obliged to treat the cash withdrawals from the All In One account at Lake Michigan Credit Union as wages

* Both our Supreme Court and our Court of Appeals have observed "that 'a great weight of the evidence' challenge would seem to be irrelevant in the bench trial setting," Ambs v Kalamazoo County Road Commission, 255 Mich App 637, 652 n14 (2003), quoting Hadfield v Oakland County Drain Commissioner, 430 Mich 139, 187 n26 (1988), but the Court nonetheless must be careful in reviewing its own factual findings after a bench trial because those findings are subject to review on appeal for clear error. Hadfield, 430 Mich at 187 n26. Accordingly, the Court shall revisit its factual findings in considering Defendant Ellison's motion for a new trial.

that should have been paid to Feuerstein. If Ellison took money from that account to which he had no legal right, he cannot reduce his obligation to All In One by asking the Court to treat some of the withdrawals as Feuerstein's imputed wages.

Third, Defendant Ellison contends that "[t]he only evidence provided was a document titled 'Withdrawals by Jason Ellison' which was not a record made at the time but created for trial." The Michigan Rules of Evidence, however, do not prohibit the use of demonstrative aids, which are not themselves treated as substantive evidence. See Campbell v Menze Construction Co, 15 Mich App 407, 408-409 (1968). Beyond that, MRE 1006 authorizes the use of summary charts (that are treated as substantive evidence) if they accurately reflect the "contents of voluminous writings, recordings, or photographs which cannot conveniently be examined in court[.]" In the instant case, the Court carefully reviewed the primary documents, such as bank statements, to arrive at a figure of damages resulting from Ellison's withdrawals from the All In One account. The document to which Ellison refers in his motion, therefore, had no adverse impact upon the Court's determination of damages. Accordingly, the Court shall stand by its findings of fact, conclusions of law, and verdict by denying Ellison's motion for a new trial

IT IS SO ORDERED.



Dated: February 5, 2019

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