

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

INTERNATIONAL OUTDOOR, INC.,

Plaintiff,

Case No. 16-155472-CB

vs

Hon.: Martha Anderson

SS MITX, LLC and LAMAR ADVERTISING  
OF MICHIGAN, INC.,

Defendant,

and

LAMAR ADVERTISING OF MICHIGAN, INC.,  
d/b/a THE LAMAR COMPANIES and  
SSMITX, LLC d/b/a SIMPLY SELF STORAGE,

Counter-Plaintiffs,

v

INTERNATIONAL OUTDOOR, INC.,

Counter-Defendant.

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**PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR RECONSIDERATION**

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NOW COMES the Plaintiff/Counter-Defendant, by and through its attorneys, LUCIDO & MANZELLA, P.C., and for its Motion for Reconsideration submits as follows:

1. A jury trial in this matter was originally scheduled for November 8, 2021 at 8:30 a.m., a date set due in large part to the COVID-19 pandemic.
2. This case concluded after a jury verdict for Plaintiff/Counter-Defendant, but the case endured several appeals and remands.
3. On June 22, 2021, this Honorable Court issued a sua sponte order setting the jury trial for July 27, 2021 at 8:30 a.m. (Ex. A, June 22, 2021 Order).
4. Plaintiff/Counter-Defendant filed a Motion to Adjourn Trial. After Defendant/Counter-Plaintiff filed a Response, Plaintiff/Counter-Defendant filed a Reply Brief, however it was stricken from this Court's record. (Ex. B, Order Striking Reply Brief).
5. On July 7, 2021, this Honorable Court issued an Opinion and Order granting the Motion, but only based upon the Court's scheduling. It did not consider the Plaintiff/Counter-Defendant's Reply Brief, even the Plaintiff/Counter-Defendant's Co-Counsel, Vincenzo Manzella's, (herein "Co-Counsel") circumstances in making its decision. (Ex. C, Order Granting Motion).
6. This Court moved the Trial date to August 13, 2021, only a few weeks later, pursuant to that Order.
7. However the new date is still inconvenient to Co-Counsel, since Co-Counsel will have only less than three weeks to prepare after his criminal jury trial, and since all witnesses cannot be mustered in such a short time frame.

Respectfully Submitted,

LUCIDO & MANZELLA, PC

By: 

VINCENZO MANZELLA (P 61801)  
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DATED: July 19, 2021

Certificate of Service – MI File ECT

The undersigned certifies that this document was served electronically upon all counsels of record utilizing the MiFile E-File and Serve system on:

July 19, 2021

/s/ MICHELE A. HINTZ

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**PLAINTIFF/COUNTER-DEFENDANT'S BRIEF IN SUPPORT OF ITS MOTION  
FOR RECONSIDERATION**

NOW COMES the Plaintiff/Counter-Defendant, by and through its attorneys, LUCIDO & MANZELLA, P.C., and for its Brief in Support of its Motion for Reconsideration submits as follows:

**INTRODUCTION**

This case was filed in 2016. The case eventually ended with a jury trial verdict for Plaintiff/Counter-Defendant. However the decision was vacated, and an appeal was taken. After that appeal, and others, the case was remanded back to this Court for another jury trial. A jury trial was scheduled for November 8, 2021 at 8:30 a.m., but on June 22, 2021, this Honorable Court issued a sua sponte order setting the jury trial for July 27, 2021 at 8:30 a.m. (Ex. A, June 22, 2021 Order). That moved the Trial up more than three months without prior notice to any party.

Co-Counsel was retained on March 4, 2020 to act as trial counsel, and he filed an appearance on June 2, 2021. Co-Counsel was specifically retained to prosecute the Trial on Plaintiff/Counter-Defendant's behalf. Co-Counsel is also attorney of record for a 2018 felony life-offense case, *People v. Paul Bashi*. (Ex. E, Macomb County Courtview). *People v. Paul Bashi* was scheduled for a jury trial on June 21, 2021, but Judge Joseph Toia scheduled the jury trial for July 23, 2021 @ 9:00 a.m. due to that court's conducting of another trial for an in-custody defendant. Judge Toia has already confirmed that July 23, 2021 is a date-certain jury trial, with no further adjournments allowed, barring any emergencies.

Plaintiff/Counter-Defendant then filed a Motion to Adjourn Trial. After Defendant/Counter-Plaintiff filed a Response, Plaintiff/Counter-Defendant filed a Reply Brief, however it was stricken from this Court's record. (Ex. B, Order Striking Reply Brief). On July 7, 2021, this Honorable Court issued an Opinion and Order granting the Motion for an Adjournment of Trial. (Ex. C, Order Granting Motion). While the Court granted the Motion, the Court only took into consideration its own scheduling when making the decision, and nothing regarding Co-Counsel's particular circumstances. This Motion has followed.

#### STANDARD OF REVIEW

When a Motion for Reconsideration is filed with the court, "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 2.1 19(F)(3). A moving party generally must demonstrate an issue of law or fact that was not previously considered, which would necessarily require a different outcome in order to show palpable error (*See Nichols v Marsh*, 29 NW 37, 38 (1886)); (*see also People v Walters*, 266 Mich App 341, 352 (2005), where an incorrect standard of review was applied to a motion for reconsideration and was held to be "palpable error" requiring a different disposition of the motion).

I. THE COURT COMMITTED PALPABLE ERROR WHEN IT GRANTED PLAINTIFF/COUNTER-DEFENDANT'S MOTION SINCE IT ONLY TOOK INTO ACCOUNT ITS OWN SCHEDULE WHEN IT MADE ITS DECISION TO ADJOURN TRIAL TO AUGUST 13, 2021.

i. Counsel Has Relied Upon This Court's Orders In Order To Prepare For This, And Other Matters.

A. *Plaintiff Lacks Sufficient Time To Prepare For This Trial, As Well As His Other Criminal Trial Set For July 23, 2021.*

The Court committed palpable error since it failed to take into account any of Co-Counsel's circumstances when it granted the Motion to Adjourn Trial. The Michigan Rule of Professional Conduct Rule 1.1, Competence, imposes duties on an attorney when prosecuting or defending a case. It reads in pertinent part:

A lawyer shall provide competent representation to a client. A lawyer shall not:

.....

(b) handle a legal matter without preparation adequate in the circumstances.

The Rule makes clear that an attorney must not prosecute a matter when he or she is not properly prepared. Co-Counsel has relied upon this Court's orders to effectively prepare for this Trial, however the Court's Order prejudices Co-Counsel's ability to prosecute this case. The Court's Order prejudices Co-Counsel's ability to prosecute this case because it has eliminated more than 4 months that Co-Counsel, brought on specifically for Trial, could use to prepare for this case. However the Court failed to consider any of these circumstances when it adjourned Trial, and has committed palpable error as a result.

*B. Co-Counsel's Criminal Trial Must Come Before This Civil Case Pursuant to MCL 768.2, Meaning Co-Counsel Must Properly Prepare For The Same.*

Co-Counsel's criminal trial, an attempted murder trial, takes precedence over this civil case. Criminal cases shall always come first before civil trials unless they can be interspersed between these criminal trials. MCL 768.2. *See also* Mich. Const., Art 1, § 2: "[i]n every criminal prosecution, the accused shall have the right to a speedy and public trial..."

Co-Counsel's criminal trial must come before this trial. That trial was already adjourned multiple times due to COVID, but the court in that case will not adjourn the trial again. This case cannot be interspersed between the criminal trial because Paul Bashi's trial is another court, and was scheduled before this Court's Order adjourning this Trial to July 27, 2021. Good Cause exists to adjourn this Trial back to the original date of November 8, 2021 so that Co-Counsel can adequately prepare for Paul Bashi's case per the Court's prior order scheduling this matter for November 8, 2021.

- ii. The Court Should Have Considered The Impending Legislation Regarding Vacating Of Jury Awards By Judges, Since The Legislation Will Probably Render This Trial Moot, And Adjourned The Trial In Conjunction With The Same.

The Court did not consider the effect that Senate Bill No. 408 will have on this case, and may actually abrogate the Trial altogether. Senate Bill No. 408, which has passed the Michigan Senate as of May 27, 2021, may render this entire Trial moot. (Ex. D, New Legislation; Ex. E, Support for New Legislation). The legislation will directly impact this case, as it provides for a remedy for those litigants whose rights were affected by a court's vacating of jury trial awards by trial court judges, which is what occurred here. An

adjournment will allow this Court to assess whether a Trial is even necessary, and will conserve judicial resources by awaiting the same. The Court committed palpable error when it failed to consider such legislation, and the effect it will have on this case.

- iii. The Court Committed Palpable Error When It Failed To Consider The Court's Own Schedule for August 13, 2021, Since The Court Has Scheduled Four Trials Set For That Day.

The Court committed palpable error by failing to consider its own schedule for August 13, 2021 since the Court has another four trials scheduled. In the interest of justice, the case must be adjourned to accommodate the other four cases. In its discretion the court may grant an adjournment to promote the cause of justice. MCR 2.503(D)(1).

In this case, this Court has four other civil trials scheduled that day. (Ex. F, 8/13/2021 Docket for Your Honor). It is impossible that this case could be tried, especially when jurors need empaneling. The Court must promote the cause of justice to other litigants since it is impossible for four other trials to take place that day. The Court must also promote the cause of justice by allowing to Plaintiff/Counter-Defendant counsel of his choice in such a circumstance.

### **RELIEF REQUESTED**

WHEREFORE Plaintiff/Counter-Defendant respectfully requests that this Honorable Court:

- A. Grant Plaintiff/Counter-Defendant's Motion for Reconsideration; and
- B. Adjourn Trial in this matter to November 8, 2021; and
- C. Grant any other relief that this Honorable Court deems equitable and just.

8. Furthermore, new legislation will also likely render the need for this Trial moot, meaning the Court should move the Trial to await the effect of this legislation. (Ex. D, New Legislation; Ex. E, Support for New Legislation).
9. Plaintiff/Counter-Defendant contends that this Court's decision is based on palpable error as follows: (i) the Court moved the Trial date only owing to its own schedule, to a date still inconvenient to Plaintiff/Counter-Defendant's Co-Counsel.
10. Plaintiff/Counter-Defendant brings this Motion pursuant to MCR 2.119(F) to reconsider the Court's ruling of July 7, 2021, and relies on the Brief attached in support of this Motion.

RELIEF REQUESTED

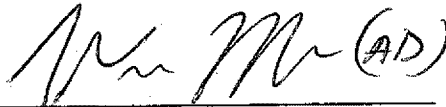
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- B. Adjourn Trial in this matter to November 8, 2021; and
- C. Grant any other relief that this Honorable Court deems equitable and just.

Respectfully Submitted,

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