

IN THE COMMON PLEAS COURT OF DARKE COUNTY, OHIO

HOME-OWNERS INS. CO., as subrogee : **CASE NO. 14-CV-00564**
of CARL AND KRISTA GEHRET

Plaintiff, : **Jonathan P. Hein, Judge**

vs. :

BUDDE CONSTRUCTION, LTD., et. al. :
Defendants. : **JUDGMENT ENTRY–**
Motion for Reconsideration

This matter comes before the Court upon Motion of Defendant Installed Building Products, LLC which asks the Court to reconsider its interlocutory filed May 15, 2015. The Plaintiff filed a responsive pleading within the time permitted by Local Rule 5(F). The Court heard oral arguments on the record via telephone conference call.

Motions for Reconsideration

First, the Court agrees that a motion for reconsideration is an appropriate manner in which to bring a matter back before the Court when the decision for which reconsideration is sought is not a final order. Such motions are permitted under Civil Rule 54(B) where the Court has issued interlocutory orders; reconsideration is subject to the discretion of the court that rendered the decision. *See Pitts v. Ohio Dept. of Transportation*, 67 Ohio St.2d 378, 423 N.E.2d 1105 (1981). A trial court has plenary authority to review its own decisions prior to issuance of a final order. *Vanest v. Pillsbury Co.*, 124 Ohio App.3d 525, 241 N.E.2d 825 (4th Dist. 1997).

However, motions to reconsider should not be used in an attempt to re-litigate issues previously resolved. *Warner v. C.P. Chemical Co.*, 1987 Ohio App. LEXIS 6712 (9th Dist.). See also *State v. Bassham*, 94 Ohio St.3d 269, 762 N.E. 2d 963 (2002).

Analysis

The Court agrees that it incorrectly stated in its prior decision that IBP was the installer of a flue pipe; instead, the flue pipe was apparently installed by Defendant Steve & Ted's Services, Inc. Further, the Court agrees that it incorrectly stated in its prior decision that the intended purpose at the time of the installation was for a corn stove since such appliance was not installed until several year after the initial installation. Such inaccurate statement of the facts is inexcusable for which the author offers his apology.

However, even with the facts as now correctly stated, the Court again determines that privity of contract is not a necessary element where claims of negligence are alleged by an owner of a home against the general contractor and various subcontractors of the home. See *McMillan v. Brune-Harpenau-Torbeck Builders, Inc.*, 8 Ohio St.3d 3, 455 N.E.2d 1276 (1983). Further, the policy argument is support of this conclusion as artfully stated by Judge David Cheney of the Allen County Court of Appeals in *Donegal Mut. Ins. v. Installed Building Products*, CV2014 0043 (Mar. 4, 2015) is again adopted.

IT IS, THEREFORE, ORDERED AND DECREED that the Motion for reconsideration is denied.

Jonathan P. Hein, Judge

cc: David M. Matejczyk, Attorney for Plaintiff (via email)
Molly G. Vance, Attorney for Budde Construction (via email)

Stephen V. Freeze, Attorney for Steve & Ted's Service (via email)
Joseph J. Golian, Attorney for Installed Building, et. al. (via email)

jph\research\reconsider