

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GERMAN FREE STATE OF
BAVARIA, *et al.*,

Case No. 1:06-CV-407

Plaintiffs,

Hon. Richard Alan Enslin

v.

TOYOBO CO., LTD, *et al.*,

ORDER

Defendants. _____ /

This matter is before the Court on Plaintiffs' Motion for Partial Reconsideration of the Court's Opinion and Partial Judgement dismissing the claims against Defendant Toyobo America, Inc. with prejudice. Under Rule 7.4(a), Plaintiff must demonstrate that the Court's Order suffers from a palpable defect, and must "also show that a different disposition of the case must result from a correction thereof." W.D. MICH. LCIVR 7.4(a).

Plaintiffs request the Court vacate those portions of its Opinion and Order which dismissed Plaintiffs' claims against Toyobo America, Inc. with prejudice. Plaintiffs assert a dismissal for lack of personal jurisdiction is not an adjudication on the merits for preclusive purposes and therefore, such a dismissal should be without prejudice to allow the action to be re-filed in an appropriate forum. *See Intera Corp. v. Henderson*, 428 F.3d 605, 620-21 (6th Cir. 2005) (holding a dismissal for lack of personal jurisdiction should be made 'without prejudice' as it does not operate as an adjudication on the merits and is consistent with Federal Rule of Civil Procedure 41(b)."); *see also Pratt v. Ventas, Inc.*, 365 F.3d 514, 522 (6th Cir. 2004) (same). After review, the Court agrees and finds that a dismissal with prejudice for lack of personal jurisdiction is a palpable defect. Accordingly,

IT IS HEREBY ORDERED that Plaintiffs' Motion to Reconsider (Dkt. No. 115) is **GRANTED**.

IT IS FURTHER ORDERED that the Court's Opinion and Order dismissing Plaintiffs' claims against Defendant Toyobo America, Inc. with prejudice (Dkt. Nos. 103, 104) are **AMENDED** to reflect Plaintiffs' claims against Defendant Toyobo America, Inc. are **DISMISSED WITHOUT PREJUDICE**.

DATED in Kalamazoo, MI:
June 1, 2007

/s/ Richard Alan Enslin
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE