

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

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COURT OF APPEAL
DETROIT OFFICE

TAMARA FILAS,

Plaintiff-Appellant,

Court of Appeals No: 317972

Circuit Court No: 13-000652-NI

-vs-

KEVIN THOMAS CULPERT, AND
EFFICIENT DESIGN, INC., A Michigan
Corporation.

Defendants-Appellees.

TAMARA FILAS Plaintiff-Appellant 6477 Edgewood Rd. Canton, MI 48187 (734) 751-0103 e-mail redacted	MICHAEL C. O'MALLEY (P59108) Attorney for Defendant Efficient Design Vandever Garzia 1450 W. Long Lake Rd., Suite 100 Troy, MI 48098 (248) 312-2940 momalley@vgpclaw.com
DREW W. BROADDUS (P64658) Attorney for Defendant Culpert Secret Wardle 2600 Troy Center Drive, P.O. Box 5025 Troy, MI 48007-5025 (616) 272-7966 dbroaddus@secrestwardle.com	JAMES C. WRIGHT (P67613) Attorney for Defendant Efficient Design Zausmer, Kaufman, August & Caldwell, P.C. 31700 Middlebelt Rd., Suite 150 Farmington Hills, MI 48334 (248) 851-4111 jwright@zkact.com

**PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION OF THE
GRANTING OF DEFENDANT-APPELLEE [KEVIN THOMAS] CULPERT'S MOTION
TO AFFIRM**

Plaintiff-Appellant, Tamara Filas, for her Motion for Reconsideration of the Granting of Defendant-Appellee [Kevin Thomas] Culpert's Motion to Affirm, states the following:

1. On 11-25-14, the Court of Appeals issued an Order granting Defendant-Appellee's Motion to Affirm, with respect to issues I – III, claiming these issues “*were resolved by this Court's opinion in Filas v MEEMIC Insurance Company, unpublished per curiam opinion of the Court of Appeals (Docket No. 316822, issued October 14, 2014).*”
2. Defendant-Appellee's Motion to Affirm filed on 10-17-14, citing the Doctrine of Collateral Estoppel, was prematurely filed without the proper legal grounds to support the filing based upon the aforementioned doctrine because the issues of fact in the Court of Appeals opinion in the MEEMIC case in item 1, above, had not been fully litigated and the judgment was not final. PL-AT still had the legal option to file an application for leave to appeal to the Michigan Supreme Court until 11-26-14.
3. Without proper legal grounds to justify Defendant-Appellee's action of filing of the Motion to Affirm in the first place, since PL-AT's case had not been fully litigated and she still had the option to appeal to the MSC, the 11-25-14 Order granting Defendant-Appellee's Motion to Affirm should not have been issued by the Court.
4. Defendant-Appellee's Motion to Affirm cited the Doctrine of Collateral Estoppel as grounds for granting the Motion, stating that the issues presented in the MEEMIC case were identical to the issues presented in the instant case.
5. PL-AT disagreed and presented arguments supporting her position that the issues were not identical, although in this motion, she is not requesting the COA reconsider those arguments because the facts of whether or not the issues are identical, have not been fully litigated and determined by a valid and final judgment.

6. As presented in Argument 3 of PL-AT's Answer to DF-AE's Motion to Affirm, for the Doctrine of Collateral Estoppel to apply, "*(1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and **final judgment**; (2) the same parties must have had a **full and fair opportunity** to litigate the issue.*"
7. A valid and final judgment in *Filas v MEEMIC* does not yet exist because an application for leave to appeal this case was timely appealed to the Michigan Supreme Court on 11-26-14, and assigned Case No. 150510.
8. Therefore, the Doctrine of Collateral Estoppel cannot yet be applied to this case, and the Court of Appeals prematurely granted DF-AE's Motion to Affirm.

12-16-14
Date

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Signature
redacted

**PLAINTIFF-APPELLANT'S BRIEF IN SUPPORT OF MOTION FOR
RECONSIDERATION OF THE GRANTING OF DEFENDANT-APPELLEE [KEVIN
THOMAS] CULPERT'S MOTION TO AFFIRM**

On 11-25-14, the Court of Appeals issued an Order granting Defendant-Appellee's Motion to Affirm, with respect to issues I – III, claiming these issues “*were resolved by this Court's opinion in Filas v MEEMIC Insurance Company, unpublished per curiam opinion of the Court of Appeals (Docket No. 316822, issued October 14, 2014).*” Defendant-Appellee's Motion to Affirm cited the Doctrine of Collateral Estoppel as grounds for granting the Motion, stating that the issues presented in the MEEMIC case were identical to the issues presented in the instant case.

PL-AT's third argument presented in her 11-7-14 Answer to DF-AE's Motion to Affirm stated the following:

ARGUMENT 3: THE DOCTRINE OF COLLATERAL ESTOPPEL WOULD NOT APPLY BECAUSE THE PLAINTIFF-APPELLANT HAS NOT MET THE CRITERIA OF HAVING HAD A “FULL AND FAIR OPPORTUNITY TO LITIGATE THE ISSUE,” NOR IS THE COA JUDGMENT YET FINAL.

For the doctrine to apply, “(1) *a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue.*”

Plaintiff-Appellant still has the opportunity to request leave to appeal to the Supreme Court. For this reason, a “*valid and final judgment*” does not yet exist, and the Plaintiff-Appellant has therefore not “*had a full and fair opportunity to litigate the issue.*”

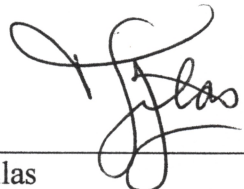
When DF-AE's Motion to Affirm was filed on 10-17-14, PL-AT submitted her answer to the Motion to Affirm on 11-7-14 with argument 3 above included in that answer and the Motion to affirm was granted on 11-25-14, PL-AT still had a legal right to apply for a leave to appeal to the Michigan Supreme Court regarding the COA opinion, *Filas v. MEEMIC*, Docket No. 316822, until 11-26-14. Thereby, the Motion to Affirm was filed and also granted before PL-AT had a full and fair opportunity to litigate the COA opinion and before a valid and final judgment on the COA opinion existed.

A valid and final judgment in *Filas v MEEMIC* still does not yet exist because an application for leave to appeal this case was timely filed with the Michigan Supreme Court on 11-26-14, and assigned Case No. 150510 and is still pending. Therefore, the Doctrine of Collateral Estoppel was not applicable when the Motion to Affirm was filed or granted, and the Court of Appeals improperly granted DF-AE's Motion to Affirm. The COA should have denied DF-AE's Motion to Affirm based upon the Doctrine of Collateral Estoppel on the grounds it was premature, frivolous and without legal grounds or merit since the *Filas v. MEEMIC* opinion of the COA was not final and PL-AT had not had a full and fair opportunity to apply for leave to appeal to the MSC to have issues and facts regarding the *Filas v. MEEMIC* opinion litigated by the Michigan Supreme Court. None of the attorneys in the third-party case have legal grounds to have PL-AT's case dismissed in this Motion to Affirm because the Doctrine of Estoppel does not apply.

WHEREFORE, PL-AT requests the Court of Appeals to Reconsider DF-AE's Motion to Affirm and deny it, since the grounds upon which it was granted are not applicable because the COA Opinion in *Filas v MEEMIC* is not final and PL-AT has not had a full and fair opportunity

to litigate the issues, which are requirements to satisfy the Doctrine of Collateral Estoppel. Upon denial of DF-AE's Motion to Affirm, PL-AT requests the Court of Appeals to schedule all five issues presented in PL-AT's appeal for oral argument at a future session of the court, without further delay.

12-16-14
Date



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