

STATE OF MICHIGAN
IN THE MICHIGAN COURT OF APPEALS

TAMARA FILAS,

Plaintiff-Appellant,

vs.

Court of Appeals Case No. 317972
Lower Court Case No. 13-000652-NI
Honorable Susan D. Borman

KEVIN THOMAS CULPERT and
EFFICIENT DESIGN, INC. a
Michigan Corporation,

Defendants-Appellees.

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**DEFENDANT-APPELLEE EFFICIENT DESIGN, INC.'S ANSWER TO PLAINTIFF-
APPELLANT'S MOTION FOR RECONSIDERATION**

Defendant-Appellee Efficient Design, Inc. ("Efficient Design") states the following for its Answer to Plaintiff-Appellant Tamara Filas' ("Plaintiff-Appellant") Motion for Reconsideration:

Plaintiff-Appellant's chief argument in her Motion for Reconsideration is that this

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VANDEVEER GARZIA P. C.

Court should not have applied collateral estoppel when this Court's opinion in *Filas v MEEMIC*, unpublished per curiam opinion (No. 316822), could still be appealed to the Michigan Supreme Court. This argument is unpersuasive and Plaintiff-Appellant's Motion should be denied.

In the Court of Appeals, motions for reconsideration "are subject to the restrictions contained in MCR 2.119(F)(3)." MCR 7.215(I)(1). A motion for reconsideration may not merely restate "the same issues ruled on by the court, either expressly or by reasonable implication..." MCR 2.119(F)(3). As a general rule, a motion for reconsideration must demonstrate "palpable error by which the court and the parties have been misled." *Id.*; *Charbenau v Wayne Co Gen Hosp*, 158 Mich App 730, 733 (1987). A motion for reconsideration based on a legal theory or facts that could have been pled or argued previously is properly denied. *Id.* The arguments Plaintiff-Appellant makes in her Motion for Reconsideration either were made, or could have been made, in her Response to Defendant-Appellee Culpert's Motion to Affirm, and there is no showing of palpable error.

Furthermore, contrary to Plaintiff-Appellant's assertions, a pending appeal does not prevent the application of collateral estoppel where there is an otherwise final ruling. See *City of Troy v Hershberger*, 27 Mich App 123, 127 (1970) (addressing the issue of res judicata). The finality of an order is clearly not affected by a pending appeal in Michigan. *Eisfelder v Michigan Dept of Natural Resources*, 847 F Supp 78, 83 (WD Mich 1993). See also *Eliason Corp v Michigan Dept of Labor*, 564 F Supp 1298, 1302 (WD Mich 1983). This concept extends to collateral estoppel under federal precedent. *In re Weldon*, 397 Mich 225, 315 (1976), overruled on other grounds by *Bowie v Arder*, 441 Mich 23 (1992); *Bui v IBP, Inc*, 205 F Supp 2d 1181, 1189 (D Kan

2002); see also 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure* § 4433 (1981).

The fact Plaintiff-Appellant still had the opportunity to appeal this Court's decision in *Filas v MEEMIC*, had no bearing on the finality of that decision for the purposes of applying collateral estoppel in this case. This Court properly granted the Motion to Affirm as to the issues resolved in *Filas v MEEMIC*.

For the foregoing reasons, Defendant-Appellee, Efficient Designs, Inc., respectfully requests this Honorable deny Plaintiff's Motion for Reconsideration.

VANDEVEER GARZIA, P.C.

/s/ Michael C. O'Malley
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Dated: January 13, 2015

PROOF OF SERVICE

The undersigned certifies that a copy of the foregoing was served upon the attorneys of record of all parties to the above cause by the court's filing system on January 13, 2015. I declare under penalty of perjury that the statement above is true to the best of my information, knowledge and belief.

/s/Kimberly Coomer