STATE OF MICHIGAN

IN THE COURT OF APPEALS

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.

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

On 1-12-15, Plaintiff-Appellant, Tamara Filas, filed a Motion for Leave to Reply to DF-AE's Answer(s) to her 12-16-14 Motion for Reconsideration (Exhibit A, 1-12-15 Motion without Exhibits attached). As of 1-22-15, the 1-12-15 Motion has not been heard. On 1-2-15, PL-AT filed her 12-31-14 Answer to DF-AE Culpert's 12-22-14 Answer with the Court. For this Reply to DF-AE, Efficient Design Inc.'s 1-13-15 Answer to PL-AT's Motion for Reconsideration, PL-AT states the following:

Mr. O'Malley, one of the two attorneys representing one of the two insurance policies held by Efficient Design, claims in his 1-13-15 "DEFENDANT-APPELLEE EFFICIENT DESIGN, INC.'S ANSWER TO PLAINTIFF-APPELLANT'S MOTION FOR RECONSIDERATION" that Plaintiff-Appellant's chief argument in her Motion for Reconsideration is that this Court should not have applied collateral estoppel when this Court's Opinion in *Filas v. MEEMIC*, unpublished per curiam opinion (No. 316822), could still be appealed to the Michigan Supreme Court. Although PL-AT's first argument presented in her 12-31-14 "REPLY TO DEFENDANT-APPELLEE KEVIN THOMAS CULPERT'S ANSWER TO PLAINTIFF'S MOTION FOR RECONSIDERATION" was in regard to said claim, PL-AT in no way implied it was her chief argument. She presented her arguments to follow Mr. Broaddus's Answer and they were not necessarily discussed in the order of importance.

PL-AT's "chief argument" is that **the Defendants are not the same in the two cases that are being compared** (this one and the aforementioned MEEMIC case No. 316822) to determine whether the doctrine of collateral estoppel applies. This important argument appears as #1 in PL-AT's Conclusion in her 12-31-14 Reply to DF-AE, Culpert's Answer. Argument 3 of PL-AT's 11-7-14 Answer to DF-AE's Motion to Affirm, also explained that 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."*

In order for the Doctrine of Collateral Estoppel to apply, the PL-AT would have to be making the same claims against the same defendant. Here, The Defendants were not the same: In COA case number 316822, the Defendant was MEEMIC Insurance Co. In the instant COA Case No. 317972, the Defendants were Kevin Culpert and Efficient Design, Kevin Culpert's employer. Suppose for example, a store-owner and caught a person for shoplifting and filed a case against the shoplifter. Then, two weeks later, they caught a different person shoplifting. The store-owner could file a case against the second, different defendant, for the same claim of shoplifting. Or suppose one's home was robbed and charges were pressed against that criminal. Then, their home was robbed again by a different person. For a court to decide that they can't press charges against the second person because they already filed a similar case against a different defendant would be absolutely absurd! It is the same here---there are two different Defendants, so the Doctrine of Collateral Estoppel cannot be applied.

The lone fact that the Defendants were not the same is sufficient to rule out the applicability of the Doctrine of Collateral Estoppel, regardless of whether or not any other facts between the two cases were the same or different or if the MEEMIC ruling by the COA had been finalized or not. However, the facts that lead to the rulings were not the same. As a matter of record, the facts leading to the COA's decision in the MEEMIC case were clearly different from the instant appeal because the COA ruling regarding the signing of medical release forms by PL-AT was based upon a Protective Order that did not exist in the instant appeal. Thereby, although the legal question as to whether or not PL-AT was obligated under the law to sign only medical release forms provided by the DF-AE's attorney to provide discovery information or could

supply her medical information using the SCAO forms or any other form as long as the information was provided was essentially the same, the deciding factor in the MEEMIC case was a Protective Order, which is non-existent in the instant case. Other facts regarding the signing of the medical release forms by PL-AT were also comparatively different between the different defendants in the MEEMIC case and the Culpert and Efficient Design case. The facts in the instant case were disregarded in the COA ruling on the instant case because of DF-AE's claim of collateral estoppel. PL-AT never had a full and fair opportunity to litigate the issue and present oral arguments because the instant COA ruling was incorrectly based upon the DF-AE's attorney's claim of the Doctrine of Collateral Estoppel that did not meet the criteria under the Doctrine of Collateral Estoppel to be a valid claim upon which to file the Motion to Affirm in the first place. As a subgenre of res judicata, collateral estoppel prevents subsequent litigation of legal determinations of fact only when the same lawsuit defined by the same substantive legal issue is brought at another time against the same defendant. The instant appeal is in regard to a case against defendants Kevin Culpert and Efficient Design, not MEEMIC, a different defendant.

Mr. O'Malley also claims *"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."* PL-AT did argue in her 11-7-14 Answer to DF-AE's Motion to Affirm that the 10-14-14 COA Opinion in *Filas v MEEMIC* (COA Case No. 316822) was not a final order since it could still be appealed to the Michigan Supreme Court ("MSC"). However, contrary to Mr. O'Malley's claim, PL-AT could not have argued in the 11-7-14 filing that she had filed an application for leave to appeal the MEEMIC case to the MSC, since her Application to the MSC was not filed until 11-26-14, after her 11-7-14 Answer to Culpert's Motion to Affirm had been filed. See Argument I of PL-

AT's 12-31-14 Reply).

PL-AT also was required to argue in her 12-31-14 Reply to Culpert's Answer, that her case should not be handled according to the federal precedents, as Mr. Broaddus claimed in his 12-22-14 Answer to her 12-16-14 Motion for Reconsideration (See Argument II of PL-AT's 12-31-14 Reply).

The aforementioned issues could not have been brought up in PL-AT's 11-7-14 Answer to Culpert's Motion to Affirm because they did not exist at that time. Therefore, a Motion for Reconsideration, and permission to Reply to the new arguments presented in Culpert's Answer, were appropriate.

Mr. O'Malley states, "*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.*" Again, this is nonsensical. Just because some similar issues (or even if they had been the same) were considered resolved in a case that PL-AT has against a different insurance company, and therefore a different defendant, cannot allow the court to dismiss similar (or the same) claims against a totally different set of insurance companies (three in the instant case). The Doctrine of Collateral Estoppel simply cannot be applied to compare two cases with different Defendants!

The fact the parties were different in each case was obvious. DF-AE's attorneys, O'Malley and Broaddus are basing their claims of collateral estoppel on the proceedings in Case No. 316822. The names of Culpert and Efficient Design Inc. are nowhere to be found on page one of any filings made in Case No. 316822, where the names of the Appellant and Appellee are listed, nor are they listed at the top of the Register of Actions, where parties are listed for a case.

The only Appellee listed on Case No. 316822 is MEEMIC Insurance Co. There was never a dispute as to whether or not MEEMIC was not the same party as Culpert and Efficient Design. The Defendants were not the same when Mr. Broaddus, attorney for DF-AE Culpert, filed his Motion to Affirm based on the Doctrine of Collateral Estoppel. It is reasonable to assert that Mr. Broaddus knew this before and when he filed his Motion to Affirm based on the Doctrine of Collateral Estoppel, and had assumed PL-AT would not be able to decipher the doctrine and rebut his arguments.

WHEREFORE, Plaintiff-Appellant, Tamara Filas, respectfully requests this Court to grant her 12-16-14 Motion for Reconsideration and deny DF-AE's Motion to Affirm in its entirety, so that the proceedings in the instant appeal for issues for issues I – V as presented in PL-AT's Brief on Appeal, can continue, and oral arguments can be scheduled and heard as soon as possible.

Respectfully submitted,

Signature redacted

1-23-15
Date

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