

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

MICHAEL DEMIL, an individual,
Plaintiff,

vs.

Case No. 2013-3468-CK

RMD PROPERTIES, LTD, a Michigan corporation,
Defendant.

MICHAEL DEMIL, an individual,
Plaintiff/Counter-Defendant,

HENRI JAMES DEMIL, and individual, SARAH
MAE DEMIL, an individual, HANNAH RENE
DEMIL, an individual and SAVANNAH LYNN
DEMIL, an individual

Plaintiffs,

vs.

Case No. 2012-889-CK

RMD HOLDINGS, LTD, a Michigan corporation
And ROBERT E. DEMIL, an individual,

Defendants/Counter-Plaintiffs.

ROBERT E. DEMIL, an individual,
Plaintiff,

vs.

Case No. 2013-4291-CB

MICHEAL DEMIL, an individual and CRAIG
FENTON, an individual,

Defendants.

OPINION AND ORDER

RMD Holdings, LLC and Robert E. Demil (“Movants”) have filed a joint motion for reconsideration of the Court’s January 7, 2013 Opinion and Order denying their motion for recusal. RMD Properties, LTD has filed a concurrence with the instant motion. In the alternative, those three parties request that the Court refer the matter to the State Court Administrative Office for assignment to another judge for decision de novo with regards to case no. 2012-889-CK.

Motions for reconsideration are provided for in MCR 2.119. A motion for reconsideration is addressed to the sound discretion of the trial court. *In re: Beglinger Trust*, 221 Mich App 273, 279; 561 NW2d 130 (1997). Such a motion is not to be granted unless filed within 21 days of the challenged decision. MCR 2.119(F)(1). The moving party must demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issue(s) ruled upon by the Court, either expressly or by reasonable implication, will not be granted. *Id.* The purpose of MCR 2.119(F) is to allow a trial court to immediately correct any obvious mistakes it may have made in ruling on a motion, which would otherwise be subject to correction on appeal but at a much greater expense to the parties. *Bers v Bers*, 161 Mich App 457, 462; 411 NW2d 732 (1987). Unless the Court directs otherwise, there is no oral argument on the motion for reconsideration. MCR 2.119(F)(2).

In support of their motion, Movants point out that the Court mistakenly stated that Robert E. Demil had filed a memorandum on the recusal issue in which he asserted that recusal was not

necessary. As Movants now postulate, the Court intended to note that Michael Demil, rather than Robert E. Demil, had filed a brief asserting that recusal is not warranted. However, that distinction does not change the Court's analysis on the issue of recusal.

With respect to Movants other clarifications, the Court has reviewed the motion and is satisfied that Movants have failed to demonstrate a palpable error by which the Court and the parties have been misled and show a different disposition of the motion must result from correction of the error. Mr. Aloia had not taken any action on the matter Judge Foster retained him to handle for months prior to any of the above-referenced cases being filed with/transferred to Judge Foster. Even assuming that Movants are correct that the formal attorney-client relationship was not terminated until after the cases were assigned/transferred, Judge Foster, by disclosing the representation, satisfied the requirements under *Passman v Ford Motor Company*, unpublished per curium opinion of the Court of Appeals, decided April 10, 2008, (Docket Number 1005132). Accordingly, the Court remains convinced that the parties' request for recusal was properly denied.

Because their motion is denied, Movants request that their initial motion for recusal be referred to SCAO for de novo review by another judge. MCR 2.003(D)(3)(a)(ii) provides, that if the challenged judge is the chief judge, on the request of a party, the challenged judge shall refer the motion to the state court administrator for assignment to another judge, who shall decide the motion de novo. Movants have requested that the motion be referred to SCAO as provided by the court rule. Consequently, the motion for recusal shall be referred.

Conclusion

For the reasons set forth above, Robert E. Demil and RMD Holdings, LLC's joint motion for reconsideration of the Court's January 7, 2014 Opinion and Order is DENIED. The parties'

motion for recusal of Judge Foster with respect to case no. 2012-889-CK shall be referred to the State Court Administrative Office as provided by MCR 2.003(D)(3)(a)(ii). Pursuant to MCR 2.602(A)(3), the Court states this Opinion and Order neither resolves the last claim nor closes the cases.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: January 15, 2014

JCF/sr

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