

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 Ltd. and Robert Demil (“Movants”) have filed a joint motion for recusal and reassignment of these matters. RMD Properties, Ltd. has also filed a concurrence in support of the motion. Robert Demil has also filed a brief on this issue and contends that Judge Foster does not need to recuse himself.

Shortly after case no. 2012-889-CK was reassigned to the specialized business docket on November 14, 2013, Judge Foster disclosed to the parties that counsel for Michael Demil, Benjamin J. Aloia, Esq., had been previously been retained by him, in his individual capacity to review documents and prepare a complaint for him in connection with a potential breach of contract action. The representation began in May 2013 and ended before any of the above-referenced actions were transferred or assigned to Judge Foster. Although the relationship was not formally terminated until after the matters were on Judge Foster’s docket, after the disclosure, the Movants filed the instant motion for recusal and reassignment.

The Michigan Court of Appeals has addressed a similar situation in *Passman v Ford Motor Company*, unpublished per curium opinion of the Court of Appeals, decided April 10, 2008, (Docket Number 1005132). In *Passman*, plaintiff’s counsel had represented the trial judge in a case in a matter similar to the underlying matter, i.e. a defective automobile engine matter. Despite the similarities between the two matters, neither plaintiff’s counsel nor the trial court judge disclosed the relationship. In vacating the trial court’s award, the Michigan Court of Appeals held that “because plaintiff’s counsel recently represented the trial judge in a matter similar to the present case.....the trial court judge was required to either disclose this relationship to defense counsel or recuse himself.” *Id.* at 4.

While not binding, the Court finds *Passman* persuasive. In these matters, unlike in *Passman*, the subject matter is not similar and the Court disclosed the prior relationship shortly after the actions were reassigned or filed. Accordingly, the Court, unlike the trial court in *Passman*, satisfied its obligation by disclosing the relationship. In this matter, the Court is convinced that the Movants' request for recusal is properly denied.

Conclusion

For the reasons set forth above, the RMD Holdings, Ltd. and Robert Demil's joint motion for recusal and reassignment is DENIED. 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 7, 2014

JCF/sr

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