

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF WAYNE**

**AFSCME COUNCIL 25, AND ITS  
AFFILIATED LOCALS,  
Plaintiff,**

**v  
CHARTER COUNTY OF WAYNE  
and WARREN EVANS, ITS COUNTY EXECUTIVE**

Case No. 15-011774-ck  
Hon. John A. Murphy

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**PLAINTIFF'S MOTION FOR REHEARING AND/OR RECONSIDERATION UNDER  
THE PROVISIONS OF MCR 2.119(F)**

**ORAL ARGUMENT REQUESTED**

Now comes plaintiff, AFSCME Council 25 and its affiliated Local 3317 by and through its attorney, Jamil Akhtar, P.C. by Jamil Akhtar and for its Motion for Rehearing and/or Reconsideration of the Court's Order dismissing plaintiff's cause of action on May 6, 2016, states as follows:

1. On September 10, 2015 plaintiff filed its original Complaint with this Honorable Court requesting a Writ of Mandamus and alleging in Court II a breach of contract. The breach of contract count alleged that the defendant had entered into a written contract to submit plaintiff's outstanding contractual issues to binding arbitration.

2. At the time the Complaint was filed on September 10, 2015 the defendants had pending before the Michigan Employment Relations Commission a Motion dated August 24, 2015, to Dismiss Plaintiff's Petition for Act 313 Arbitration. (Exhibit #1)

3. Plaintiff responded to the defendant's Motion claiming that it had a separate contract, outside of the provisions of the Public Employment Relations Act to go to arbitration irrespective of the fact that the County had declared a financial emergency under the provisions of Act 436, P.A. 2012. (Exhibit #2)

4. Plaintiff's Brief in Opposition to Defendant's Motion to Dismiss filed at the MERC, also alleged that under the doctrine of Promissory Estoppel, that the defendants were precluded from denying plaintiff's contract to proceed to binding arbitration.

5. On October 16, 2015 the MERC issued its Decision and Order stating that under the provisions of Act 436, P. A. 2012 that the County had the right to

refuse to go to binding arbitration under the provisions of Act 312 of the Public Acts of 1969 as amended. (Exhibit #3).

6. The Decision of the Employment Relations Commission did not deal with the merits of plaintiff's claims alleging a secondary contractual right to go to binding arbitration and plaintiff's claim under the doctrine of Promissory Estoppel stating that the defendants could not deny the contractual obligation entered into between the parties. The Michigan Employment Relations Commission in its October 16, 2015 Decision did not rule on the merits of plaintiff's promissory estoppel claim, stating that it was without authority to do so. (Exhibit #3 Pg. 10)

7. On April 26, 2016, the defendants filed their Supplemental Brief in Opposition to the plaintiff's Motion to enforce the contract and for the Court to rely upon the doctrine of Promissory Estoppel. This was the first time that Res Judicata was raised by the defendants. Under the provisions of MCR 2.116 (C) (7) and (D) (2) the defense of "Prior Judgement" must be raised in a party's responsive pleadings or in a motion in motion file in response to the filing of a complaint; this the defendants failed to do and its argument/ defense is not properly before the court.

8. The Court was misled by the defendants when it filed its Supplemental Brief on April 26, 2016, when the defendants argued to the Court that the MERC Decision of October 16, 2015 constituted a decision on the merits and therefore, the doctrine of res judicata applied.

9. It is further plaintiff's position that the Court, in relying upon defendants' arguments in its Second Supplemental Brief, committed palpable error in determining that the Decision of the Employment Relations Commission on October 16, 2015, constituted a decision on the merits thus allowing for the application of the doctrine of res judicata.

10. On May 6, 2016 the court issued its order dismissing Plaintiff complaint. (Exhibit #4)

**WHEREFORE, PLAINTIFF RESPECTFULLY REQUESTS** that this Honorable Court reverse its previous decision, or in the alternative, allow for re-argument of the issue of res judicata only; plaintiff is therefore requesting oral argument on this issue.

Dated: May 27, 2016

/S/ Jamil Akhtar  
Jamil Akhtar

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2016, I electronically filed the foregoing Plaintiff's Motion for Rehearing and/or Reconsideration and Brief in Support, Exhibits, with the Clerk of the Court using the filing system which will send notification of such filing to all parties of record.

/S/ Jamil Akhtar  
Jamil Akhtar

PLAINTIFF'S BRIEF IN SUPPORT OF MOTION FOR  
REHEARING OR RECONSIDERATION UNDER THE  
PROVISIONS OF MCR 2.119(F)

I. Statement of Facts

Plaintiff hereby incorporates paragraphs 1 through 9 of its Motion for Rehearing or Reconsideration as its Statement of Facts. Plaintiff further incorporates the Exhibits annexed thereto.

II. Legal Argument

A Motion for Rehearing and/or Reconsideration needs to demonstrate to the Court that the said Motion is not filed merely to rehash the original Motion but should “*demonstrate a palpable error in which the Court and the parties have been misled and show that a different disposition of the Motion must result from the correction of the error.*” Fetz Engineering Co., v Ecco Systems, Inc., 188 Mich App 362 (1991); Michigan Bank/Midwest v D.J. Reynaert, Inc., 165 Mich App 630 (1988).

Under MCR 2.119(F) the Court has discretion to grant rehearing or reconsideration of a decision on a Motion. This rules allows the Court considerable discretion in granting reconsideration to correct mistake, to preserve judicial economy and to minimize costs to the parties; Kokx v Bylenga, 241 Mich 655 (2000). See also Smith v Sinai Hosp. of Detroit, 152 Mich 716 (1986).

In plaintiff's Motion now pending before the Court alleges that the Court has been misled as it relates to the application of the doctrine of res judicata and that the Court's Order dated May 6, 2016, constituters a palpable error.

The applicability of the legal doctrines of **res judicata** and collateral estoppel present a question of law subject to de novo review. Estes v Titus, 481 Mich 573, 578-579; 751 NW2d 493 (2008).

The doctrine of res judicata “bars a second, subsequent action when (1) the prior action was decided on the merits, (2) both actions involve the same parties or their privies; and (3) the matter in the second case was, or could have been resolved in the first.” Adair v Mich, 470 Mich 105 (2004); See Bd of Co Road Comm'rs for Co of Eaton v Schultz, 205 Mich App 371, 376; 521 NW2d 847 (1994). With regard to the third element and summary proceedings, Claims “actually litigated in the summary proceedings” are barred by **res judicata** in subsequent proceedings, MCL 600.5750 notwithstanding. Sewell v Clean Cut Mgt, Inc, 463 Mich 569, 576-577; 621 NW2d 222 (2001).

Not only did the Commission at page (9) of its Decision rule that if there was a contract to go to arbitration that it would be void under Act 436. This is not decision on the merits; it is a decision that the MERC was without authority to even look at the merits of Plaintiffs claim

Most importantly though is the statement that relates to Promissory Estoppel found at page (10) of the Commission’s Decision. The Commission unequivocally states that it does not have the authority to make decisions on equitable arguments. The Commission states as follows:

***“Even if we were to assume the fact to be as alleged by the petitioner, that would not give us the authority to interfere with the rights and obligations that the County has assumed upon entering into the Act 436 Consent Agreement for the purpose of taking remedial measures to address the County’s financial emergency”.***

Therefore, the MERC did not make a finding on the merits as to the existence of a contract to go to arbitration and as to the equitable argument relating to promissory estoppel. Promissory estoppel is an action in equity and not at law and therefore, it is impossible for the MERC to rule on plaintiff's equitable estoppel argument.

The Defendants are required to raise their Defense of "Prior Judgment" in accordance with MCR 2.116 (D)(2). MCR 2.116 (C) (7) includes the defense of a prior judgment as a means of dismissing any element of a Plaintiff's complaint; however this defense must be raised in the first responsive pleading or by motion for summary disposition. In *Odom v Wayne Co.*, 482 Mich 459, 466; 760 NW2d 217 (2008); the court held as follows

**The grounds for a motion under MCR 2.116(C)(7) must be raised in a party's responsive pleading, unless the grounds are stated in a motion filed under MCR 2.116 "prior to the party's first responsive pleading." MCR 2.116(D)(2). Summary disposition may be granted under MCR 2.116(C)(7) if a claim is barred because of . . . prior judgment . . . statute of limitations . . . or other disposition of the claim before commencement of the action." The following standards are applicable to a motion under MCR 2.116(C)(7):**

Therefore; the issue of Res Judicata, is not properly before the court and the granting of plaintiff's motion for rehearing and or reconsideration should be granted.

Wherefore, plaintiff respectfully requests that this Honorable Court reconsider its Order of May 6, 2016, and if so desired, that Oral Arguments be scheduled on this issue; alternatively, that the Court reverse its previous Order

and that this matter proceed to trial.

Respectfully Submitted,

Dated: May 27, 2016

/S/ Jamil Akhtar  
Jamil Akhtar

**CERTIFICATE OF SERVICE**

I hereby certify that on May 27, 2016, I electronically filed the foregoing Plaintiff's Motion for Rehearing and/or Reconsideration and Brief in Support, Exhibits, with the Clerk of the Court using the filing system which will send notification of such filing to all parties of record.

/S/ Jamil Akhtar  
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