

Court of Appeals, State of Michigan

ORDER

Nancy Sanders v McLaren-Macomb

Docket No. 336409

LC No. 2015-004372-NH

Deborah A. Servitto
Presiding Judge

Elizabeth L. Gleicher

Colleen A. O'Brien
Judges

The Court orders that the motion for immediate consideration is GRANTED.

The application for leave to appeal is GRANTED. The time for taking further steps in this appeal runs from the date of the Clerk's certification of this order. MCR 7.205(E)(3). This appeal is limited to the issues raised in the application and supporting brief. MCR 7.205(E)(4).

Gleicher, J., would deny the application for leave to appeal in this case, as defendant's argument lacks merit. Defendants became aware that one or more of the Notices of Intent had been sent to the wrong address shortly after plaintiff filed her complaint. Plaintiff's counsel avers in an affidavit which remains uncontested that he emailed the NOI's to defense counsel on December 28, 2015. MCR 2.112(L)(2) provides: "All challenges to a notice of intent to sue must be made by motion, filed pursuant to MCR 2.119, at the time the defendant files its first response to the complaint." Defendants had the information they needed to challenge the NOI's and their service in time to comply with the Court Rule.

Further, I reject defendants' argument that because the NOIs were mailed to incorrect addresses, the subsequent action was not "commenced." This is clearly incorrect. See MCL 600.1901 ("A civil action is commenced by filing a complaint with the court."). Further, the issue in this case is whether defendants were obligated to abide by the Court Rules, which clearly set forth when a challenge to an NOI must be made. Defendant's belief that the case had never been properly filed does not excuse their flagrant disregard of the MCR 2.112(L)(2). See *Saffian v Simmons*, 477 Mich 8 (2007).



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

MAR 03 2017

Date


Chief Clerk