

Court of Appeals, State of Michigan

ORDER

Citizens Bank v Black Law Offices PC; Black Law Offices PC v
Citizens Bank

Docket No. 318981; 318982

LC No. 11-001186-CK; 11-000017-CZ

Peter D. O'Connell
Presiding Judge

William C. Whitbeck

Stephen L. Borrello
Judges

The Court orders that the motion to file a reply brief in response to the answer to the motion to dismiss is GRANTED.

The motion to dismiss is DENIED because it is not clear this Court lacks jurisdiction over these appeals as of right. We acknowledge that the discussion in *Schenderner v Midwest Bank & Trust Co*, unpublished opinion per curiam of the Court of Appeals, issued November 8, 2011 (Docket No. 295756), pp 7-8, would seem to indicate that a party may not file a claim of appeal from a final order under MCR 7.202(6)(a)(i) that was entered on stipulation of the parties in order to challenge a prior order that was not within the scope of the matters addressed in the stipulation. However, as an unpublished opinion, *Schenderner* is not precedentially binding under the rule of stare decisis. MCR 7.215(C)(1). We also respectfully question the soundness of that discussion in *Schenderner*, which relies substantially on a statement in *Dora v Lesinski*, 351 Mich 579, 582; 88 NW2d 592 (1958). *Dora* was decided before the establishment of this Court and, thus, before the adoption of MCR 7.202(6)(a)(i). Considered in context, the statement in *Dora* indicating that one may not appeal "from" a consent judgment, order, or decree seems to very arguably mean that one may not appeal to challenge such a consent judgment, order, or decree, not to preclude an appeal following a stipulated order that constitutes a final order under MCR 7.202(6)(a)(i) in order to challenge a prior order that was not entered on stipulation of the parties. See *Green v Ziegelman*, 282 Mich App 292, 301 n 6; 767 NW2d 660 (2009). However, this order is without prejudice to full consideration of this jurisdictional issue by the case call panel.

The motion for stay pending appeal is DENIED.

The motion to waive appeal bond is DENIED.

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



APR 25 2014

Date

Chief Clerk