

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN

NEW JERUSALEM DELIVERANCE CHURCH,
Plaintiff,

v.

THOMAS RABETTE, et al.
Defendants.

Case Number: 2:10-cv-12566
Judge: Hon. Robert H. Cleland
Magistrate: Mona K. Majzoub

**Plaintiff's Brief in Support of the Motion for Reconsideration,
Motion for Leave to Amend the Complaint with Proposed Amended Complaint, and
Ex-Parte Emergency Motion for Temporary Stay Pending Appeal**

Questions Presented:

1. Should the Court reconsider granting summary judgment to all Defendants on Count One so as to avoid collateral estoppels from attaching to Plaintiff's state law claims?

Plaintiff: Yes

Defendants: No

2. Should the Court grant leave to amend the complaint to add civil RICO claims because public policy disfavoring governmental corruption and the due process violations against the Plaintiff outweigh any prejudice to the Defendants?

Plaintiff: Yes

Defendants: No

3. Should the Court report the serious and felonious acts of attorney misconduct to the Michigan Attorney Grievance Commission?

Plaintiff: Yes

Defendants: No

4. Should the Court grant an ex-parte emergency motion for stay pending appeal?

Plaintiff: Yes

Defendants: No

Analysis:

F.R.Civ.P. 59(e) permits a party to move for reconsideration. This rule states, “Motion to Alter or Amend a Judgment: A motion to alter or amend a judgment must be filed no later than 28 days after entry of the judgment.” However, the local rules of the Eastern District of Michigan dictate a shorter period of time with which to seek reconsideration. L.R. 7.1(h) states as follows:

(h) Motions for Rehearing or Reconsideration.

(1) Time. A motion for rehearing or reconsideration must be filed within 14 days after entry of the judgment or order.

(2) No Response and No Hearing Allowed. No response to the motion and no oral argument are permitted unless the court orders otherwise.

(3) Grounds. Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration that merely present the same issues ruled upon by the court, either expressly or by reasonable implication. **The movant must not only demonstrate a palpable defect by which the court and the parties and other persons entitled to be heard on the motion have been misled but also show that correcting the defect will result in a different disposition of the case.** [Emphasis added.]

The palpable defect readily apparent in the Court’s granting of summary judgment to all Defendants is that the Court turns a blind eye to the evidence of governmental corruption, even to the extent of ignoring the felonies committed by the Defendants and their counsel, in obstruction of justice of this litigation. Specifically, the Court, in its discretion, has taken moment to issue Orders to Show Cause against the Plaintiff, but has taken no such moment to issue Orders to Show Cause why the Oakland County Defendants, or their counsel, should not be sanctioned for fraud upon the court, perjury, and the subornation of perjury.

18 U.S.C. §1621 states the following:

Whoever—

(1) having taken an oath before a competent tribunal, officer, or person, in any case in which a law of the United States authorizes an oath to be administered, that he will testify, declare, depose, or certify truly, or that any written testimony, declaration, deposition, or certificate by him subscribed, is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true; or

(2) in any declaration, certificate, verification, or statement under penalty of perjury as permitted under section [1746](#) of title [28](#), United States Code, willfully subscribes as true any material matter which he does not believe to be true;

is guilty of perjury and shall, except as otherwise expressly provided by law, be fined under this title or imprisoned not more than five years, or both. This section is applicable whether the statement or subscription is made within or without the United States.

Furthermore, 18 U.S.C. §1622 states as follows:

Whoever procures another to commit any perjury is guilty of subornation of perjury, and shall be fined under this title or imprisoned not more than five years, or both.

In the Court's Orders to Show Cause, the Court strained at the gnat of Plaintiff's indiscretions regarding electronic filing irregularities, to the extent of even striking Plaintiff's Response to Footnote 1 of the Court's Order of April 20, 2011 as untimely, even though such was filed before the Court entered its Order of April 29, 2011. Nevertheless, the Court ignores the pink elephant in the room by not citing reasons for which the Court has neglected its duty to report serious attorney misconduct to the proper authorities.

Canon 3(B)(6) of the Code of Conduct for United States Judges states the following:

(5) A judge should take appropriate action upon learning of reliable evidence indicating the likelihood that a judge's conduct contravened this Code or a lawyer violated applicable rules of professional conduct.

As stated above, the perjurious affidavit of Defendant Thomas Rabette should bear heightened scrutiny because this Defendant is an attorney. Moreover, the submission of such an affidavit by his counsel occasions subornation of perjury. Given that the perjury and subornation

of perjury were occasioned by these Defendants efforts to quash Plaintiff's case due to its uncovering of the Defendants' governmental corruption, such egregious discretions should be corrected by granting Plaintiff's motion to amend the complaint to substitute Count One's violation of civil rights under color of law with a civil RICO count. To do otherwise dampens the integrity of the Court, denies Plaintiff due process, and results in a manifest injustice that goes against public policy.

The Court cites prejudice to Defendant ECCU as grounds for granting summary judgment on Count One but allowing the supplemental state law claim of quiet title to be dismissed without prejudice. The Court's reasoning is not persuasive because factual basis of Count One is so intimately intertwined with the factual basis of Count Two that the granting of summary judgment on the merits of Count One risks subjecting Plaintiff to collateral estoppel of raising the same facts in support of its quiet title rights under Count Two. Accordingly, the Court should reconsider its summary judgment in favor of all Defendants relative to Count One.

The Court cited *Northrip v. Federal National Mortgage Association*, 527 F.2d 23 (6th Cir. 1975), as grounds to grant summary judgment. However, the appellate court's holding in *Northrip* reversed the district court on the basis that the action of a deputy in a sheriff sale is insufficient nexus for state action. The appellate court did not affirm a grant of summary judgment. The reversal could just as easily be construed as a dismissal, with or without prejudice, on a single federal claim. The reversal need not be construed as foreclosing the Plaintiff from amending the complaint to assert other federal claims that arose during discovery. Indeed, if the Court is perturbed by prejudice to Defendant ECCU, the Court should penalize the Oakland County Defendants who executed ECCU's invalid sheriff deed, rather than blaming the

victim, i.e., the foreclosed Plaintiff, and penalizing the debtor's poverty rather than bringing light to the Oakland County Defendants' governmental corruption.

In addition to granting leave to amend, the Court should report the Oakland County wrongdoers to the appropriate governmental agencies, namely, the Michigan Attorney Grievance Commission and the U.S. or Michigan Attorney General's Offices.

In light of the foregoing, Plaintiff seeks an ex-parte emergency stay to prevent Defendant ECCU from using the invalid sheriff deed as grounds to evict Plaintiff from the disputed property. Defendant ECCU has given Plaintiff a 30-day notice to quit, demanding that Plaintiff vacate the property by May 29, 2011. Wherefore, Plaintiff moves the Court to stay any eviction pending appeal of this case.

Respectfully submitted,

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Proof of Service

I certify that a copy of the foregoing document was filed with the Clerk of Court for the Eastern District Court of Michigan via the ECF System which electronically mails a copy of said document to Ralph Chapa and Jordan Lederman, of Kaufman, Payton, and Chapa and Bradley J. Fisher of Scholten Fant.

Respectfully submitted,

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May 3, 2011