

ORIGINAL

IN THE COURT SUPREME COURT OF OHIO

EDIN AGIC)	Case No. 2014-1924
)	
Plaintiff-Appellant,)	
)	On Appeal from the Cuyahoga County
v.)	Court of Appeals, Eighth Appellate
)	District
NATL. UNION FIRE INS. CO. OF)	
PITTSBURGH, et al.,)	Court of Appeals Case No. CA-13-100679
)	
Defendants-Appellees.)	

BRIEF IN OPPOSITION TO MOTION FOR RECONSIDERATION OF DECISION
DECLINING JURISDICTIONAL APPEAL OF PLAINTIFF-APPELLANT EDIN AGIC

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Plaintiff-Appellant Edin Agic has filed a "Motion for Reconsideration" of this Court's denial of jurisdiction. Appellant's Motion has been brought pursuant to S.Ct.Prac.R. 18.02(B)(1) which provides as follows in relevant part:

(B) Basis for filing

A motion for reconsideration **shall not constitute a reargument of the case** and may be filed only with respect to the following Supreme Court Decisions:

- (1) Refusal to accept a jurisdictional appeal;

The Supreme Court of Ohio in *Dublin City Schools Board of Education v. Franklin County Board of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, 11 N.E.3d 222, explained the standard to be applied in ruling upon a Motion for Reconsideration. This Court stated as follows:

Under S.Ct.Prac.R. 18.02, we use our reconsideration authority to "correct decisions which, upon reflection, are deemed to have been made in error." *State ex rel. Huebner v. W. Jefferson Village Council* 75 Ohio St.3d 381, 383, 662 N.E.2d 339 (1995). We will not, however, grant reconsideration when a movant seeks merely to reargue the case at hand. S.Ct.Prac.R. 18.02(B).

In the case at bar, the Cuyahoga County Court of Appeals affirmed summary judgment in favor of Appellees based upon the doctrine of collateral estoppel. Appellant argued in his Memorandum in Support of Jurisdiction that the court of appeals should have imposed a strict requirement of mutuality of the issues and mutuality of the parties as a condition for the defensive use of collateral estoppel. Appellant further argued that his due process rights and right to a trial by jury were violated by application of the doctrine of collateral estoppel to bar his claims. (Memorandum in Support of Jurisdiction at pp. 1, 2, 7, 8, and 10). These are the **same arguments** asserted in Appellant's Motion for Reconsideration.

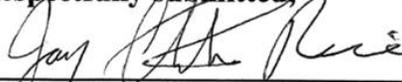
In its Memorandum Opposing Jurisdiction, Appellee cited Supreme Court precedent and numerous appellate court decisions which relaxed the mutuality requirement and allowed the nonmutual defensive use of collateral estoppel when a party against whom the doctrine is

asserted previously had his day in court and was permitted to fully litigate the “specific issue” sought to be raised in the later action. The “defensive use of collateral estoppel has been upheld in the majority of Ohio appellate courts.” See *Frank v. Simon*, 6th Dist. No. L-06-1185, 2007-Ohio-1324, 2007 Ohio App. LEXIS 1231 at ¶12 (March 23, 2007).

Appellant asserts in his Motion for Reconsideration that these cases “cited by opposing counsel in their Memoranda in Opposition to Appellant’s Memorandum in Support of Jurisdiction only further demonstrate the erosion of Plaintiffs’ due process rights by eliminating both the mutuality of the issues and the parties” Appellant’s reference to these cases cited by Appellees in their jurisdictional briefs shows that Appellant is merely seeking reargument of the case. This is not grounds for reconsideration.

Appellant has failed to present this Court with any argument that was not considered in the jurisdictional briefing. This Honorable Court was correct in declining jurisdiction. This Court announced the criteria for collateral estoppel twenty years ago (Appellee’s Memorandum Opposing Jurisdiction at pp. 1, 13-14). These criteria were satisfied in this case. This case does not present a matter of public or great general interest. Appellant’s Motion for Reconsideration raises no new issue requiring further review by this Court. Thus, Appellant’s Motion for Reconsideration should also be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that on this 7 day of May, 2015, a copy of the foregoing *Brief In Opposition To Motion For Reconsideration Of Decision Declining Jurisdictional Appeal Of Plaintiff-Appellant Edin Agic* was served by U.S. regular to the following:

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