

STATE OF MICHIGAN  
COURT OF APPEALS

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DAVID CASCIOLI,

Plaintiff-Appellant,

v

SURFSIDE INTERNATIONAL, L.L.C.,

Defendant-Appellee.

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UNPUBLISHED

November 25, 2008

No. 280639

Oakland Circuit Court

LC No. 2006-078962-CD

Before: O'Connell, P.J., and Smolenski and Gleicher, JJ.

O'CONNELL, P.J. (*concurring in part and dissenting in part*).

I concur with the majority opinion that the compulsory joinder rule, MCR 2.203(A), does not apply to cases originally filed in the small claims division of the district court and, therefore, I concur with the majority opinion's conclusion to reverse the decision of the lower court. I write separately to state that the balance of the majority opinion, although interesting, is not outcome determinative and, in my opinion, constitutes dictum. Therefore, I see no reason to address the remaining issues.<sup>1</sup>

/s/ Peter D. O'Connell

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<sup>1</sup> Were I to address the issues, I would conclude that the pertinent court rule does not support the majority opinion's analysis implying that the compulsory joinder rule is not applicable to litigants who file their claims in the wrong court. The compulsory joinder rule embodied in MCR 2.203(A) provides:

In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the transaction or occurrence that is the subject matter of the action and does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

I find nothing in this court rule that is ambiguous.