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COURT HOUSE
WILMINGTON, DELAWARE 19801

STEPHEN P. LAMB
VICE-CHANCELLOR

February 9, 2001

John L. Reed, Esquire
Duane Morris & Heckscher
1201 N. Orange Street, 10th Floor
P.O. Box 195
Wilmington, DE 19899

Jesse A. Finkelstein, Esquire
Richards, Layton & Finger
One Rodney Square
P.O. Box 551
Wilmington, DE 19899

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DIANNE M. KEMPSKI
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RE: *John A. Gentile v. Singlepoint Financial, Inc.*
C.A. No. 17755

Dear Counsel:

Plaintiff, John A. Gentile, moves for reargument of the court's January 5, 2001 memorandum opinion ("Opinion") in which I denied his motion for summary judgment seeking the advancement from SinglePoint Financial, Inc. of his reasonable costs or expenses in connection with several litigations initiated by him.

The standard on a motion for reargument is "whether the Court has misapprehended a material fact or rule of law."¹ A motion that is "a mere

¹ *Miles v. Cookson America, Inc.*, Del. Ch., 677 A.2d 505 (1995).

rehash of arguments already made” will fail.² Having this standard in mind, I am satisfied that the Opinion did not misapprehend a material fact or misconstrue the applicable law. Moreover, it is clear to me that arguments presented by Gentile were fully argued in connection with the cross-motions for summary judgment and were given full consideration in the Opinion. For these reasons, the motion for reargument must be denied.

Gentile suggests that the court misapprehended two material facts. First, he points to note 25 on page 15 of the Opinion where the court drew a distinction between Gentile’s prosecution of his two federal court actions, and the possibility that he may, in the future, be called upon to defend against counterclaims in those litigations. Gentile argues that the distinction drawn by the Opinion, *i.e.* between the position of a plaintiff seeking to overcome defenses and that of a counterclaim defendant, “overlooks the fact that Gentile has already been called [on] to respond to SinglePoint’s accusations that he failed to fulfill his [fiduciary] duties.” (Motion ¶ 2). Second, Gentile argues that the Opinion mistakenly failed to recognize that his proactive litigation efforts were the result of developments in the litigation between SinglePoint and RIT over the disputed RIT stock that were “manifestation[s] of SinglePoint’s yet--to-be-proved claim that Gentile breached his fiduciary duties. ”

² *Id.* (citation omitted)

Neither of these points involves any misapprehension of fact in the Opinion. At this time, Gentile is a plaintiff in all of the pending litigations and is not a counterclaim defendant in any. Additionally, there is no question that Gentile's decision to initiate litigation against SinglePoint was made in response to developments in the SinglePoint/RIT litigation and not to the November 18, 1999 letter disclosing the internal investigation. Gentile would have the court infer a factual connection between the "internal investigation" and the settlement of the RIT litigation by SinglePoint on terms that were unfavorable to him. He does so because, as discussed in the Opinion, the "internal investigation" is a covered "Proceeding" under the advancement bylaw, but the SinglePoint/RIT litigation is not. Thus, if he could succeed in tying the two together, there would be a factual predicate, as the argument goes, to find that all of his litigation efforts to recover the RIT shares he claims were undertaken by him in his capacity as a "respondent in a Proceeding." As a factual matter, Gentile's argument fails because there simply is no basis in the record to infer that the issue of Gentile's alleged breach of fiduciary duty was ever injected into the SinglePoint/RIT litigation.

Rather, both of the asserted mistakes of fact are merely reflections of Gentile's view of -the law that SinglePoint's decision to settle the litigation with RIT on terms that were disadvantageous to him gave him a right to have his

costs advanced in connection with any litigations he initiated to recover the shares of RIT stock he claims to own. This is so, he argues, because SinglePoint justifies its decision to exclude him from the terms of the settlement on the basis that Gentile breached his fiduciary duties while serving as a director or officer of the corporation, even though no issue about his alleged misconduct was ever raised in the SinglePoint/RIT litigation. For reasons already fully explained in the Opinion, this expansive view finds no support in either the language of the bylaw provision at issue or the case law.

The rest of the motion is devoted to explaining Gentile's disagreement with the court's reading of *Citadel Holding Corp. v. Roven*.³ Fundamentally, Gentile argues that *Citadel*, broadly read, supports his position that actions taken by him to initiate litigation in response to the settlement of the SinglePoint/RIT litigation should be encompassed within the scope of the bylaw providing for the advancement of "reasonable costs incurred by an Indemnitee who was or . . . is threatened to be made a named defendant or respondent in a Proceeding." These arguments were made in connection with the cross-motions for summary judgment, were considered by me, and are addressed in the Opinion. I find

³ Del. Supr., 603 A.2d 818 (1992).

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nothing in Gentile's motion for reargument that leads me to believe that the

Opinion misconstrues *Citadel* or otherwise misapprehends the law.

For all the foregoing reasons, the Motion for Reargument of the Court's
January 5,200 1 Memorandum Opinion is DENIED.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stephen P. Land". The signature is written in a cursive style with a long, sweeping underline.

/caj

oc: Register in Chancery