



COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
Wilmington, Delaware 19801-3734

Submitted: March 9, 2005
Decided: March 16, 2005

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Re: *Stephanie Taylor Oldham v. Diane Taylor, et al.*,
Civil Action No. 18800-NC

Dear Counsel:

Pending before the Court is Plaintiff, Stephanie Taylor Oldham's ("Oldham"), motion to correct judgment pursuant to Court of Chancery Rule 60(a). For the reasons stated below, the Court denies Plaintiff's motion.

The underlying action against Defendants, Diane and Arthur H. Taylor ("Taylor") and Associates Financial Services Company, Inc. ("AFS"), to quiet all equitable claims against Oldham's undivided one-half interest in real property located at 1303 Dewson Lane, Wilmington, Delaware (the "Property") and partition the Property was decided by Justice Jacobs, sitting by designation as Vice Chancellor shortly after his appointment to

the Delaware Supreme Court, in a memorandum opinion dated August 4, 2003 (the “Opinion”). A final order was entered March 15, 2004 (the “Final Order”). Oldham brought this motion on July 20, 2004, requesting that the Court enter an order correcting what she contends is an oversight in the Final Order.

Court of Chancery Rule 60(a) provides:

(a) *Clerical mistakes.* Clerical mistakes in judgments, order[s] or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party and after such notice, if any, as the Court orders.

Rule 60(a) is only available in limited circumstances. The Rule may be used to correct a clerical error or a copying or computational mistake, but not to make changes that affect substantive rights of the parties. It does not provide “a perpetual right to apply different legal rules or different factual analyses to a case.”¹ When the movant seeks a change that is substantive in nature, such as a different calculation of interest from what originally was ordered, relief is not appropriate under Rule 60(a).²

Oldham argues that use of the word “equally” in ¶ 3(vii) of the Final Order is an oversight that inadvertently leads to an inequitable result not intended by the Court.

¹ *Baltimore Trust Co. v. McGee*, 2001 WL 985085, at *2 (Del. Super. Aug. 21, 2001) (quoting 12 James W. Moore et al., *Moore’s Federal Practice* ¶ 60.11[3] at 60-38 (3d ed. 1997)).

² *Id.* (citing Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2854 at 240-41 (1995)).

Plaintiff's motion requests that the Court "correct" the Final Order by inserting into ¶ 3(vii) alternative language that Oldham has suggested. While the language of the Final Order regarding the distribution of proceeds from a sale of the Property may be somewhat complicated, when read in the context of the Opinion from which the language is drawn virtually word for word, the intended effect of the Final Order is clear. Furthermore, from a substantive perspective, the language of the Final Order is entirely consistent with the Court's Opinion.

In their submissions related to Plaintiff's motion, counsel for both sides used the same hypothetical to illustrate their respective positions as to what the ordered distribution should be. To minimize the risk of further disagreements, I have calculated the proceeds that each party should receive under the Final Order, assuming the Property is sold for \$155,000.00 and the cost of sale is \$15,000.00.³ The distribution would be as follows:

³ The assumed sales price and cost of sale used in this illustration are taken from the hypothetical used by both parties in their papers regarding this motion. Any difference between the assumed and actual sales price and cost of sale would, of course, alter each parties' equal share of gross proceeds as well as the net proceeds.

Assumed Sales Price		\$ 155,000.00
Less Assumed Cost of Sale		(\$ 15,000.00)
Total Gross Proceeds		\$ 140,000.00
	<u>Taylor</u>	<u>Oldham</u>
Each Parties' Equal Share of Gross Proceeds	\$ 70,000.00	\$ 70,000.00
Oldham to Taylor Payment of Equitable Lien	\$ 36,814.45	(\$ 36,814.45)
Taylor Payment to AFS	(\$ 100,000.00)	
Net Proceeds	\$ 6,814.45	\$ 33,185.55

These figures merely illustrate the intended effect of the Final Order's directions regarding the distribution of proceeds.

In the submissions in support of her motion, Oldham seeks to reargue positions the Court rejected in its Opinion or to assert new arguments altogether. The time for such arguments, however, has long since passed. The Final Order was entered in March 2004 and no appeal was taken from it.

For the foregoing reasons, I find no oversight or error in the Final Order and conclude that it contemplates a distribution consistent with the hypothetical described above. Therefore, Plaintiff's motion to correct judgment under Rule 60(a) is DENIED.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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