

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

BROOKE McCAULEY,)
)
 Plaintiff,)
)
 vs.)
)
 FREDERICK J. PAOLINO t/a)
 PAOLINO PROPERTIES,)
)
 Defendant.)

C.A. No.: CPU409-00-0350

John R. Weaver, Jr., Esquire
831 North Tatnall Street, Suite 200
Wilmington, Delaware 19801

Thomas C. Marconi, Esquire
Losco & Marconi, P.A.
P.O. Box 1677
Wilmington, Delaware, 19899

Counsel for Plaintiff Brooke McCauley

*Counsel for Frederick J. Paolino t/a
Paolino Properties*

**MEMORANDUM OPINION AND ORDER ON
PLAINTIFF’S MOTION TO REARGUE**

Decided: January 13, 2012

DAVIS, J.

On June 21, 2011, the Court of Common Pleas held a trial on a complaint (the “Complaint”) filed by Plaintiff Brooke McCauley. In the Complaint, Mr. McCauley sought damages from Defendant Frederick J. Paolino t/a Paolino Properties for a purported breach of contract. At the completion of the trial, the Court ruled in favor of Mr. Paolino, holding that Mr. McCauley failed to prove a breach of contract based on the evidence presented at the trial.

On June 28, 2011, Mr. McCauley filed a motion to reargue (the “Motion”). After being made aware of the Motion, the Court set a deadline of November 23, 2011 for any response to the Motion. On November 23, 2011, Mr. Paolino filed a response (the “Response”) to the Motion. After reviewing the Motion, the Response, the file in this Civil Action, the transcript of the trial, and for the reasons set forth herein, the Motion is denied.

I. Applicable Law

Rule 59 of the Court of Common Rules of Civil Procedure applies to a party’s request for the Court of Common Pleas to reconsider a prior decision. Rule 59(a) provides as follows:

(e) *Rearguments*. A motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision. The motion shall briefly and distinctly state the grounds therefor. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.¹

A motion for reargument is the proper device for seeking the trial court’s reconsideration of its findings of fact, conclusions of law, or judgment.² The “manifest purpose” of a motion under Rule 59, including a motion for reargument, is to give the trial court an opportunity to correct errors prior to appeal.³ It is not a device for raising new arguments or stringing out the length of time for making an argument, nor is it intended to allow parties to rehash arguments already decided by the trial court.⁴ A party must serve and file the motion for reargument within 5 days after the entry of the trial court’s opinion or decision.⁵

¹ Ct. Com. Pl. Civ. R. 59(e).

² *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

³ *Id.* at 702.

⁴ *Bd. of Managers of the Del. Crim. Justice Info. Sys. v. Gannett Co.*, C.A. No. 01C-01-039WLW, 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003).

⁵ Ct. Com. Pl. Civ. R. 59(e). *See also*, *Hessler, Inc.* at 701-02.

A motion for reargument will be denied unless the trial court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.⁶ A party seeking to have the trial court reconsider the earlier ruling must demonstrate newly discovered evidence, a change in the law or manifest injustice.⁷ The trial court will generally deny a motion for reargument unless the underlying decision involved an abuse of discretion.⁸

II. Discussion

In the Motion, Mr. McCauley believes reargument is appropriate here because the Court erred by placing “the burden of proof on [Mr. McCauley (the principal)] to prove that no expenses intervened to cause [Mr. Paolino (the agent)] not to pay proceeds to [Mr. McCauley].”⁹ Mr. McCauley contends that it was judicial error to place the burden on him, as principle, to prove that there were no other expenses that could have been deducted from any proceeds due from Mr. Paolino who acted as the agent.¹⁰

Mr. Paolino responds to this by arguing that Mr. McCauley misapplies the law and misunderstands the Court’s decision at trial.¹¹ Mr. Paolino states that the ultimate burden of proving damages rests with Mr. McCauley and that to do that Mr. McCauley needed to prove, by a preponderance of the evidence, the difference in the money received by way of rents from that paid out by way of expenses.¹² Mr. Paolino goes on to contend that, at trial, Mr. McCauley failed to meet his burden because Mr. McCauley “offered no evidence to counter Mr. Paolino’s

⁶ *Simonton v. Orlov*, C.A. No. 2008-02-179, 2008 WL 2962015, at *2 (Del. Com. Pl. July 31, 2008)(quoting *Kennedy v. Invacare Corp.*, C.A. No. 04C-06-028, 2006 WL 488590, at *1 (Del. Super. Jan. 31, 2006)).

⁷ *Gannett Co.*, 2003 WL 1579170, at *1.

⁸ *Id.*

⁹ Motion at ¶ 5.

¹⁰ *Id.* at ¶ 8. In support of this argument, Mr. McCauley relies upon *J. Leo Johnson, Inc. v. Carmer*, 156 A.2d 499 (Del. Supr. 1959) and *Terry v. Pennsylvania R. Co.*, 156 A. 787 (Del. Super. 1931).

¹¹ Response at ¶ 2.

¹² *Id.*

testimony that the properties were mostly vacant...and that they were in poor condition requiring that most of what rental income there was to be spent on repairs and maintenance.”¹³

The Court agrees with the arguments set forth in the Response; however, the Court would characterize the arguments differently. The Motion seeks reargument on the theory that the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision. Mr. McCauley contends that the Court -- under the holdings in *J. Leo Johnson, Inc. v. Carmer*, 156 A.2d 499 (Del. Supr. 1959); *Terry v. Pennsylvania R. Co.*, 156 A. 787 (Del. Super. 1931); *Guarente v. Ginsburg*, 138 A.2d 456 (N.H. Supr. 1958); and, *Robbins v. Roumel*, 138 A.2d 922 (D.C. App. 1958) -- should not have placed the burden of proof on Mr. McCauley with respect to offsetting rents and expenses. The Court did not do that. Instead, the Court placed the ultimate burden of proof on Mr. McCauley, as the plaintiff seeking relief, to demonstrate that Mr. Paolino breached the controlling contract. As for demonstrating that expenses offset rents, the Court was aware of the controlling Delaware precedent and placed that burden of proof on Mr. Paolino. In arriving at its decision at trial, the Court found that Mr. Paolino carried his burden but that Mr. McCauley did not.

The Court is aware of the duties that arise in a principal/agent relationship. Moreover, the Court considered the cases cited in the Motion prior to arriving at a decision in favor of Mr. Paolino. At trial, the Court – in arriving at its final decision – did place the burden of proof on accounting for profits on Mr. Paolino as the agent in the principal/agent relationship. It was for this reason that the Court specifically found that Mr. Paolino’s testimony at trial was credible. Because Mr. Paolino had testified that the expenses from the properties consumed what little rental income there was from the properties, the Court thus concluded that Mr. Paolino met his burden of proof in accounting for profits, if any, from the properties. From this testimony and

¹³ *Id.* at ¶ 3.

other relevant testimony at trial, the Court then held that there was no breach of contract by Mr. Paolino. Or, as was stated by the Court on the record at the trial, Mr. McCauley failed to prove by a preponderance of the evidence that Mr. Paolino breached the contract.

III. Conclusion

The Court finds no misapprehension of law or facts such as would have changed the outcome of the underlying decision. The Court's analysis of the Motion leads to the conclusion that Mr. McCauley has not met the standards necessary to obtain relief under Rule 59(e). Accordingly, the Court **DENIES** the Motion.

IT IS SO ORDERED this 13th day of January, 2012.

Eric M. Davis
Judge