

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

AQUILA OF DELAWARE, INC.,	)	
	)	
Plaintiff,	)	C.A. No. N10C-07-260 JAP
	)	
v.	)	Jury Trial Demanded
	)	
WILMINGTON TRUST	)	
COMPANY,	)	
	)	
Defendant.	)	

*Upon Plaintiff's Motion for Reargument  
Motion **DENIED***

**MEMORANDUM OPINION**

*Appearances:*

Neil J. Levitsky, Esquire, Wilmington, Delaware  
Attorney for Plaintiff Aquila of Delaware, Inc.

Seth J. Reidenberg, Esquire, Wilmington Delaware  
Attorney for Defendant Wilmington Trust Company

**JOHN A. PARKINS, JR., JUDGE**

Before the Court is Plaintiff Aquila of Delaware, Inc.'s motion for reargument or to alter or amend judgment pursuant to Superior Court Civil Rules 59(d) and (e), alleging that the Court had previously ruled on the issue at the hearing prior to issuing its differing written opinion determining that the Court does not have subject matter jurisdiction over the matter. Defendant Wilmington Trust Company responds by arguing that the Court's previous comments at oral argument are to no avail where the issue of subject matter jurisdiction arises. Wilmington Trust Company is correct.

### **Factual and Procedural Background**

Wilmington Trust Company moved to dismiss the complaint of Aquila of Delaware, Inc., ("Aquila"), on grounds that the claims asserted therein were subject to mandatory arbitration pursuant to an agreement between the parties. Aquila countered that its particular claims were not arbitrable under the agreement. At the motion hearing on January 4, 2011, the Court contemplated the scope of the agreement and made a preliminary assumption that some of the claims would not be within the scope of that agreement and, thus, not subject to mandatory arbitration. After receipt of briefing from the parties and its own research, however, the Court, in *Aquila of Delaware, Inc. v. Wilmington Trust*

*Company*,<sup>1</sup> determined that a threshold question needed to be answered before any consideration of the scope of the agreement or “substantive arbitrability” of the claims could take place.<sup>2</sup> Namely, the Court needed to first determine ‘*who decides* substantive arbitrability—the court or the arbitrator?’<sup>3</sup> The Court found (1) that the parties had particularly agreed to arbitrate whether their disputes were arbitrable and who should determine such arbitrability and (2) that Wilmington Trust Company’s claims of arbitrability were not wholly groundless.<sup>4</sup>

### **Motion for Reargument Standard**

A motion for reargument is the vehicle by which a party may seek reconsideration of the trial court’s determinations.<sup>5</sup> Such a motion “will be denied unless the 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.”<sup>6</sup>

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<sup>1</sup> 2011 WL 1487060, \*2, Parkins, J. (Del. Super. Apr. 19, 2011).

<sup>2</sup> *Aquila of Delaware, Inc.*, 2011 WL 1487060 at \*2 (citing *James & Jackson, LLC v. Willie Gary, LLC*, 906 A.2d 76, 79 (Del. 2006)).

<sup>3</sup> See *Julian v. Julian*, 2009 WL 2937121, \*5, Parsons, V.C. (Del. Ch. Sept. 9, 2009).

<sup>4</sup> *Aquila of Delaware, Inc.*, 2011 WL 1487060 at \*2.

<sup>5</sup> *Beatty v. Smedley*, 2003 WL 23353491, \*2, Slights, J. (Del. Super. Mar. 12, 2003).

<sup>6</sup> *Beatty*, 2003 WL 23353491 at \*2.

## **Discussion**

“Whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the matter.”<sup>7</sup> The issue regarding lack of subject matter jurisdiction may be brought at any time.<sup>8</sup> A court does not have subject matter jurisdiction where a claim is “properly committed to arbitration.”<sup>9</sup>

Here, subsequent to oral argument, the Court came to the conclusion that the claims, including the issues of whether the claims are arbitrable and who decides such arbitrability, were properly committed to arbitration. Since the parties agreed to have the arbitrator determine whether the Court or the arbitrator has subject matter jurisdiction over any claims, the Court cannot presume such jurisdiction here. Any discussion by this Court of the scope of the agreement or the arbitrability of claims, therefore, is premature.

As a result, since the Court has not overlooked any controlling precedent or legal principles and has not misapprehended the law or facts such that its decision would be different, the parties must await the arbitrator’s determination as to jurisdiction.

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<sup>7</sup> Super. Ct. Civ. R. 12(h)(3); *Janowski v. Division of State Police Dept. of Safety and Homeland Sec.*, 2009 WL 537051, \*2, Young, J. (Del. Super. 2009).

<sup>8</sup> *Ford v. Pep Boys*, 1989 WL 16987, \*1, Babiarez, J. (Del. Super. Feb. 21, 1989).

<sup>9</sup> *Carder v. Carl M. Freeman Communities, LLC*, 2009 WL 106510, \*3, Parsons, V.C. (Del. Ch. Jan. 5, 2009).

Accordingly, Aquila's motion for reargument or to alter or amend judgment is *DENIED*.

**IT IS SO ORDERED.**

Dated: October 10, 2011

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Judge John A. Parkins, Jr.