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: December 4, 2007
Decided: December 31, 2007

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Re: *Reserves Development LLC and The Reserves Development Corporation v. Severn Savings Bank, FSB, Alan J. Hyatt and Bella Via, LLC*, Civil Action No. 2502-VCP

Dear Counsel:

Plaintiffs, Reserves Development LLC and The Reserves Development Corporation ("Reserves"), have moved for reargument of the Court's November 9, 2007 Memorandum Opinion (the "Opinion"), granting some, but not all, of the equitable relief requested in Reserves' Complaint. Relying primarily on events that occurred months after trial, Reserves' motion challenges the Court's reliance on the doctrine of unclean

hands to limit the relief granted. For the reasons stated below, I deny the motion for reargument.[1]

I. ANALYSIS

A. Legal Standard

The standard applicable to a motion for reargument is well settled. To obtain reargument, "the moving party [must] demonstrate that the Court's decision was predicated upon a misunderstanding of a material fact or a misapplication of the law."[2] Additionally, any misapprehension of fact or law must be such that "the outcome of the decision would be affected."[3]

Reargument under Court of Chancery Rule 59(f) is only available to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion.[4] In appropriate circumstances, however, a litigant may seek reargument based on newly discovered evidence.[5] To succeed on such a basis, an applicant must show the newly discovered evidence came to his knowledge since the trial and could not,

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1 The background of this dispute and the resulting litigation is set forth in the Opinion, *Reserves Dev. LLC v. Severn Sav. Bank, FSB*, 2007 WL 4054231 (Del. Ch. Nov. 9, 2007).

2 *Goldman v. Pogo.com Inc.*, 2002 WL 1824910, at * 1 (Del. Ch. July 16, 2002).

3 *Stein v. Orloff*, 1985 WL 21136, at *2 (Del. Ch. Sept. 26, 1985).

4 *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (citing *Maldonado v. Flynn*, 1980 WL 272822 (Del. Ch. July 7, 1980)).

5 *Bata v. Bata*, 170 A.2d 711, 714 (1961).

in the exercise of reasonable diligence, have been discovered for use at the trial.[6] Further, a motion for reargument will not be granted when a party merely restates its prior arguments.[7]

B. Discussion

In analyzing the motion for reargument, it is important to consider the context in which Reserves' claims in this Court arose. Reserves and Defendants, Bella Via, LLC, Severn Savings Bank, FSB, and Alan J. Hyatt, are involved in various ways in the development of a resort community in Sussex County, Delaware, known as The Reserves Resort, Spa and Country Club ("The Reserves"). Numerous contractual and other disputes have arisen among these parties relating to the construction of the infrastructure for The Reserves. The parties have been litigating the merits of those disputes in Delaware Superior Court since November 2005, and the Superior Court recently completed a trial on those issues. Reserves commenced this action in the Court of Chancery in October 2006, effectively seeking interim relief in the form of a reallocation of the risk among the parties pending resolution of their various disputes. In particular, Reserves claims that, contrary to the intent of the parties and principles of equity, it has had to bear all of the risk and Defendants, who paid none of their share of the costs, unfairly have enjoyed a free ride.

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6 *Id.*

7 *Miles*, 677 A.2d at 506.

After a three day trial and extensive posttrial briefing and argument, I held Reserves had shown a right to at least some relief on grounds of unjust enrichment and equitable estoppel. I further held, however, that under the equitable maxim, "he who comes into equity must come with clean hands,"[8] Reserves was not entitled to equitable relief as to any amounts it paid on or after October 6, 2005, or for transfers of land it made to the contractor's principal, Glenn, in payment of the contractor Fresh Cut's invoices.

Reserves bases its motion for reargument on a Delaware Supreme Court case, *Bodley v. Jones*, which stated that improper acts of a complainant "should not be the sole cause of the denial of relief, if no injury whatsoever resulted to the respondent therefrom."[9] Reserves urges the Court to jettison its limitation on the relief granted and order Defendants to reimburse Reserves for Bella Via's share of the payments made after early October 2005 based on certain events that occurred after the trial in February 2007. Specifically, Reserves contends that as a result of actions taken in other litigations: (1) there is no longer any threat of a mechanic's lien; and (2) ownership of the lots involved in the land swap agreements Reserves entered into with Glenn, which the Court criticized, has been resolved. On the latter point, Reserves asserts Fresh Cut has received

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8 *See Bodley v. Jones*, 59 A.2d 463, 469 (Del. 1947).

9 59 A.2d at 470. None of the parties cited the *Bodley* case during the posttrial briefing.

$750,000 in cash from the lots since the time of trial. I find Reserves' arguments unpersuasive for several reasons.

Preliminarily, I note Reserves does not contend the Court misapplied a rule of law or misapprehended a material fact known at the time of trial. Rather, Reserves contends events that occurred after trial could affect the exercise of the Court's judgment. Furthermore, Reserves' motion proceeds on the incorrect premise that the land swaps with Glenn impacted only the Court's analysis of Defendants' unclean hands defense. In fact, the land swaps are also relevant to both grounds upon which I decided to afford Reserves equitable relief – unjust enrichment and equitable estoppel.

1. Unjust Enrichment and Equitable Estoppel

I found Reserves demonstrated the first three of the five elements for unjust enrichment because it alone bore the infrastructure construction expenses and Defendants benefited from that construction in terms of an increase in the value of the lots owned by Bella Via and mortgaged to Severn. I also found Defendants had not shown an adequate justification for their refusal to pay at least Bella Via's admitted 36% share of those expenses. Ultimately, I concluded that, absent an equitable remedy, Bella Via would be unjustly enriched if Reserves continued to bear all of the risk associated with the payments made for the infrastructure.

Because other parts of the Opinion discussed the land swap situation, I did not explicitly address that issue in the context of Reserves' unjust enrichment claim. Nevertheless, Reserves' unilateral decision to transfer lots to Glenn in response to

invoices from his company, Fresh Cut, for the infrastructure work without any consultation with or notice to Defendants, weakened its claim for unjust enrichment in at least two respects. First, the payments to Glenn do not equate to payments to Fresh Cut, and therefore undermine the premise that Reserves, in fact, paid for the infrastructure work. In addition, as to the fourth element of unjust enrichment, the way in which Reserves purported to make payments by swapping land with Glenn could have provided a legitimate justification for Defendants' refusal to reimburse Reserves for those transfers until any questions about whether they constituted full payment of Fresh Cut's invoices were resolved. Thus, Reserves made a stronger showing of unjust enrichment as to the payments it made in cash before October 2005, than it did for any payments made thereafter.

Similarly, the land swap agreements undermined Reserves' claim for relief based on equitable estoppel. Specifically, I concluded that, after a certain point, Reserves failed to satisfy the "reasonable reliance" element of equitable estoppel. As noted in the Opinion, after receiving the email from Esham of Bella Via on July 15, 2005, Korotki should have been careful to keep Bella Via and Severn informed of what he and Reserves were doing. Further, I concluded that by October 2005, when Korotki started making payments to Glenn, instead of Fresh Cut, and using lots instead of cash to pay Glenn for Fresh Cut's invoices, Reserves no longer could claim reasonable reliance. Thus, I held Reserves could not obtain interim relief as to those payments under the doctrine of equitable estoppel.

The new facts Reserves cites in its motion for reargument provide no basis for changing either the Court's unjust enrichment or equitable estoppel analyses. The possibility that there is less uncertainty today than previously as to the ramifications of Reserves' use of land swaps to pay Glenn for Fresh Cut invoices may impact the Superior Court's decision on the ultimate merits of the parties' underlying disputes. It does not support, however, an award of additional equitable relief in this case.

2. Unclean Hands

Based on events that occurred in other litigation after the trial in this case, Reserves argues the Court's unclean hands analysis improperly limited the relief it afforded Reserves. Citing *Bodley v. Jones*,[10] Reserves contends unclean hands cannot be the sole cause for denying relief if the improper acts did not harm the party asserting the unclean hands defense.[11] According to Reserves, recent events show neither Bella Via nor Severn suffered any harm from the land swaps, because it now appears there cannot be any mechanics liens and Fresh Cut has "received $750,000 in cash from a creditor of Glenn in return for a mortgage on th[e swapped] lots."[12] Consequently, Reserves urges the Court to reject the unclean hands defense and order Defendants to reimburse Reserves for all the expenses it claims to have incurred. Defendants respond that the Court's rulings were correct and should not be modified.

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10 59 A.2d 463 (Del. 1947).

11 *Id.* at 469-70.

12 Mot. For Rearg. at 2.

Initially, I note the unclean hands defense did not constitute the sole basis for my decision to provide only limited relief to Reserves. As discussed above, the grounds for providing relief in the unique circumstances of this case were unjust enrichment and equitable estoppel. As to each of those theories, Reserves made a less convincing showing as to the payments it made only indirectly to Glenn by means of the land swaps. I considered that fact in fashioning appropriate equitable relief to address the situation of the parties in the interim before the adjudication of the merits of their underlying disputes in the companion litigation in the Superior Court.

In addition, I disagree with Reserves' assertion that no injury whatsoever resulted to Defendants from the land swaps. The new evidence Reserves proffers to show the mechanics' lien claims that were made have been settled and the interested parties to the Fresh Cut bankruptcy proceeding have reduced the number of disputes among them by way of certain stipulations, confirms the land swaps did create additional uncertainty regarding the obligations of Reserves and, indirectly, Bella Via before those developments. That circumstance alone distinguishes this case from *Bodley v. Jones*. Moreover, Bella Via contends in its opposition to the motion for reargument that certain risks created by the land swaps still exist. Bella Via argues, for example, that the Fresh Cut bankruptcy remains active and there is no indication yet there has been any reduction of the debt Reserves owes to Fresh Cut. Likewise, the stipulation relied on by Reserves indicates it may assert its rights as to the transfers of the lots, but does not recognize those rights as established as a matter of fact or law. Bella Via also asserts litigation is still

possible regarding the sufficiency of the releases Reserves obtained from Fresh Cut through Glenn for the land it transferred to him. I could not rule out the possibility of such continuing uncertainty without additional proceedings and expense in this action.

Based on these considerations and the interim nature of the relief Reserves seeks in the litigation before me, I hold that the new developments Reserves refers to do not support an expansion of the limited relief awarded in the Opinion. The cited developments may be important in the Superior Court action and in the ultimate resolution of the parties' disputes. In this case, however, Reserves relies on equitable principles to justify this Court's imposition of interim relief pending final disposition of the Superior Court action. Such relief is extraordinary and, as previously stated in the Opinion, Reserves' unilateral decision to use the disputed land swaps without any consultation with or notice to Defendants, together with its failure to adhere to the requirements of the Escrow Agreement, offend the same sense of equity to which it appeals. Thus, I decline to provide any additional relief.

II. CONCLUSION

For the foregoing reasons, Reserves' motion for reargument is DENIED.

IT IS SO ORDERED.

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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