

**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

Date Submitted: July 13, 2009

Date Decided: July 27, 2009

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Re: *Sharon L. Medek v. John W. Medek, et al.*,  
Civil Action No. 2559-VCP

Dear Counsel:

In a memorandum opinion dated July 1, 2009 (the “July 1 Opinion”), I held that Defendant PCCW is liable for, among other things, Plaintiff Sharon Medek’s reasonable attorneys’ fees and costs incurred in enforcing the Guaranty and the SSO as they relate to her claims to recover the Consulting Agreement salary and her health and dental insurance costs.<sup>1</sup> In all other respects, I denied Plaintiff’s claim for fees and costs.

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<sup>1</sup> *Medek v. Medek*, 2009 WL 2005365 (Del. Ch. July 1, 2009). Defined terms in the July 1 Opinion are used in the same way and with the same designations in this letter opinion.

On July 7, 2009, Plaintiff moved for reargument on the Court's decision as to attorneys' fees and costs. Specifically, Plaintiff seeks reargument on my refusal to award fees and costs associated with her claim under the Uniform Fraudulent Transfer Act ("UFTA")<sup>2</sup> and her claim based on the lapse of a life insurance policy. For the reasons stated below, Plaintiff's motion is denied.

### I. DISCUSSION

Reargument under Rule 59(f) is appropriate only when "the court has overlooked a controlling decision or principle of law that would have controlling effect, or the court has misapprehended the law or the facts so the outcome of the decision would be different."<sup>3</sup> The moving party must make a showing that "the court's misunderstanding of a factual or legal principle is both material and would have changed the outcome of its earlier decision."<sup>4</sup>

Plaintiff argues that the Court's decision not to award fees and costs associated with her claims under UFTA and regarding the life insurance are premised on a misapprehension of the facts in the record. As to the UFTA claim, Plaintiff emphasizes

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<sup>2</sup> 6 Del. C. §§ 1301 to 1311.

<sup>3</sup> *Those Certain Underwriters at Lloyd's, London v. Nat'l Installment Ins. Servs., Inc.*, 2008 WL 2133417, at \*1 (Del. Ch. May 21, 2008), *aff'd*, 962 A.2d 916 (Del. 2008) (TABLE); *see also Quereguan v. New Castle County*, 2006 WL 2522214, at \*2 (Del. Ch. Aug. 18, 2006); *Cole v. Kershaw*, 2000 WL 1336724, at \*3 (Del. Ch. Sept. 5, 2000) (citing *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505 (Del. Ch. 1995)).

<sup>4</sup> *Those Certain Underwriters*, 2008 WL 2133417, at \*1.

that PCCW, as guarantor of the obligations of Wes Medek, is liable to Plaintiff for damages resulting from breaches of the SSO, as well as the Guaranty. Plaintiff reasons that because Wes Medek breached the SSO, he would be required under the terms of the SSO to pay as contract damages “the reasonable and necessary costs, including such reasonable legal fees incurred by [Plaintiff] to enforce or protect . . . her rights.” According to Plaintiff, her pursuit of the UFTA claim constituted enforcing or protecting her rights under the SSO, so Medek is obligated to pay the associated fees and costs, and PCCW is, as well, in its capacity as guarantor.

The problem with Plaintiff’s reasoning, as Defendants point out, is that there was no showing that Plaintiff’s pursuit of the UFTA claim was reasonable or necessary to enforce or protect her rights in the context of the current dispute. To prove a breach of the SSO, it was not necessary to file a fraudulent transfer claim. Furthermore, Plaintiff ultimately elected not to pursue a judgment against Wes Medek personally, and conceded that it was not necessary for the Court to reach the UFTA claim, if it granted her a judgment against PCCW, as it did. The Court, therefore, never considered the merits of Plaintiff’s UFTA claim. Based on these circumstances and Plaintiff’s failure, as discussed below, to respond to Defendants’ argument that she did not show a basis for recovering her fees and costs as to claims on which she did not prevail, Plaintiff has not

met her burden of showing that the Court misapprehended either the law or the facts as to the legal fees and costs related to the UFTA claim.<sup>5</sup>

Regarding the life insurance claim, Plaintiff asserts that the Court failed to consider the following stipulated fact in the pretrial stipulation: “Both life insurance policies that [Wes] Medek was supposed to maintain under the SSO for the benefit of the plaintiff and the Trust have also lapsed for non-payment.”<sup>6</sup> This admitted fact undermines somewhat the statement in the July 1 Opinion about the absence of any “documentary evidence that corroborates Plaintiff’s averment that the policy lapsed.”<sup>7</sup> That comment, however, was secondary to the Court’s concern about the lack of evidence on other matters, such as the terms and conditions of the pertinent life insurance policy. Thus, even assuming a misapprehension of fact as to the sufficiency of the proof that the life insurance policy had lapsed, that would not have been material or caused the outcome of my decision to be different. Plaintiff’s criticism of the July 1 Opinion, therefore, falls short of providing an adequate basis for reargument.<sup>8</sup>

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<sup>5</sup> Some aspects of the UFTA claim share a common nucleus of operative facts with the claims on which Plaintiff prevailed, especially in terms of the background of the events leading up to the alleged breaches underlying those claims. Nothing in this ruling or the July 1 Opinion precludes Plaintiff from recovering the attorneys’ fees and costs she incurred in discovery regarding the details relevant to those events.

<sup>6</sup> Pl.’s Mot. for Rearg. of Ct.’s Decision as to Att’ys Fees and Costs (“Pl.’s Mot.”) ¶ 4.

<sup>7</sup> *Medek v. Medek*, 2009 WL 2005365, at \*11.

<sup>8</sup> *See Those Certain Underwriters*, 2008 WL 2133417, at \*1.

Plaintiff's motion for reargument also questions the Court's ruling that Plaintiff waived her right to contest Defendants' argument that Plaintiff should be able to obtain her attorneys' fees and costs only as to those claims on which she prevailed. Plaintiff asserts that, throughout this case, she has maintained that she had a right to recover her fees and costs under both the Guaranty and the SSO. In particular, Plaintiff points to her pretrial and post-trial briefing, and states that she had no need to address Defendants' arguments in her post-trial reply brief, because Plaintiff's "argument never changed: the language of the SSO and the parties' stipulation are controlling and establish a right to her recovery of attorney's fees and costs."<sup>9</sup> A review of the briefing, however, demonstrates the insufficiency of Plaintiff's post-trial reply on this issue.

In Plaintiff's Opening Pretrial Brief, she devoted one full page to her claim for attorneys' fees, half of which constituted quotations of the applicable provisions of the Guaranty and the SSO. Nothing in that argument explicitly indicates that Plaintiff claimed a right to recover her fees and costs whether she won or lost the litigation.<sup>10</sup> In her Opening Post-Trial Brief, Plaintiff simply reiterated the same one-page argument she made in her Opening Pretrial Brief. The portion of Defendant's Answering Post Trial Brief that addressed the claim for fees and costs stated in relevant part: "Further, any

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<sup>9</sup> Pl.'s Mot. ¶ 5.

<sup>10</sup> Defendant's Answering Pretrial Brief did not raise the issue of whether Plaintiff's right to legal fees and costs depended on her succeeding on the merits of her claims. Not surprisingly, Plaintiff's Reply Pretrial Brief did not allude to that issue either.

attorneys fees or cost that the Court orders should be limited to fee [sic] to the successful part of the litigation.” Plaintiff did not respond to that argument in her Post-Trial Reply Brief. Instead, as to her general claim for fees and costs, the reply brief stated only that: “The plaintiff believes this argument is addressed adequately in her opening brief.” In these circumstances, I found that Plaintiff failed to respond to Defendant’s argument regarding limiting any award of fees and costs to those claims on which Plaintiff prevailed. The more expansive argument Plaintiff proffers in her motion for reargument does not stem from any misapprehension of law or fact by the Court in connection with the July 1 Opinion. Thus, I deny the request for reargument on the issue of waiver.

Moreover, even if I were to consider the argument for fees advanced for the first time in Plaintiff’s Motion, it would not change the outcome of my previous decision. The argument is that Plaintiff proved that Wes Medek breached the SSO by failing to pay the premiums necessary to maintain the life insurance policies and, therefore, PCCW was liable, as a guarantor, for the legal fees and costs of pursuing that breach, even if Plaintiff ultimately failed to make out her claim for resulting damages. This argument relies, at least in part, on Section XIV.9 of the SSO, which provides in relevant part: “In the event of a breach hereof, the party committing the breach shall be obligated to pay as contract damages the reasonable and necessary costs, including such reasonable legal fees incurred by the non-breaching party to enforce or protect his or her rights hereunder.” This provision limits what Plaintiff can recover to “reasonable and necessary costs, including such reasonable legal fees incurred . . . to enforce or protect [Plaintiff’s] rights

[under the SSO].” For the reasons stated in the July 1 Opinion, I find that this language “implicitly requires that the nonbreaching party succeed in proving the occurrence of a breach to recover its attorneys’ fees.”<sup>11</sup> I do not agree, however, with the further refinement Plaintiff now advances under which she could qualify for fees and costs simply by establishing a breach without proving any claim for relief based on that breach. Accordingly, I also deny the aspect of Plaintiff’s Motion based on the life insurance claims.

## II. CONCLUSION

For the foregoing reasons, Plaintiff’s Motion for Reargument of the Court’s Decision as to Attorney’s Fees and Costs is denied.

**IT IS SO ORDERED.**

Sincerely,

/s/Donald F. Parsons, Jr.

Vice Chancellor

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<sup>11</sup> *Medek v. Medek*, 2009 WL 2005365, at \*15.