

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: July 18, 2007
Decided: July 23, 2007

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RE: William H. Black, Jr. v. Gramercy Advisors, LLC, et al.
C.A. No. 2733-VCL

Dear Counsel:

The defendants have moved for reargument of the court's decision to convert their motion to dismiss into a motion for summary judgment. That decision was reached on June 28, 2007, during the course of a hearing on the defendants' motion to stay discovery pending their motion to dismiss. For the following reasons, the motion for reargument is denied.

Court of Chancery Rule 12(b) provides that, where "matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56." In their motion designated as one under Rule 12(b)(6), the defendants submit and extensively rely on two affidavits. The

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first is an attorney's affidavit transmitting eight separate contracts, a press release, and two letter agreements. The second is the affidavit of a principal of the lead defendant in which he avers facts thought pertinent to the defense and attaches a series of account statements.

To succeed on a motion for reargument the moving party must demonstrate that the court "overlooked a principle of law that would have a controlling effect or that the Court misapprehended the law or the facts such that the outcome of the decision would be affected." *Stein v. Orloff*, 1895 WL 21136, at *2 (Del. Ch. Sept. 26, 1985). The defendants fail to satisfy this burden. The decision to treat the dismissal motion as a motion for summary judgment was entirely consistent with well-settled law of this state. *See Santa Fe Pacific Corporation Shareholder Litigation*, 669 A.2d 59 (Del. 1995); *Vanderbilt Income & Growth Associates v. ARVIDA/JMB Managers, Inc.*, 691 A.2d 609 (Del. 1996); *Highland Capital Management, LP v. T.C. Group, LLC*, 2006 WL 2128677 (Del. Super. July 27, 2006).

It is and was clear to the court that the motion to dismiss is properly treated as one for summary judgment. It is possible, as the defendants now insist, that parts of the motion could be decided without regard to the mass of factual information that they chose to place before the court. It is also, no doubt, possible

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that some portion of the documentation submitted might be relied on by the court in accordance with the rules governing dismissal motions. Nevertheless, the motion, taken as a whole, plainly introduces and relies on facts and documents not properly before the court on a Rule 12(b)(6) motion. It was not the court's duty to wade through the defendants' voluminous submissions, to search for arguments or subarguments that could be decided on the basis of the well pleaded facts of the complaint alone. For that reason, the court was clearly within its broad discretion in denying the motion to stay discovery and in treating the dismissal motion as one for summary judgment. As stated at the hearing and, in conformity with Rule 12(b), that motion will be disposed of in accordance with Rule 56 after all of the parties are given a reasonable opportunity to present all material made pertinent to such motion by Rule 56.

For these reasons, the motion for reargument is DENIED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor