

**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: September 24, 2012
Date Decided: November 14, 2012

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Re: *Kathleen Brown v. Benjamin Wiltbank, II, et al.*
Civil Action No. 2170-MA

Dear Counsel:

This Letter Opinion addresses two motions for reargument pursuant to Court of Chancery Rule 59(f). The first was filed by Plaintiff, Kathleen Brown (“Kathleen”), and the second by Defendants Homeowners Loan Corporation (“HLC”) and Mortgage Electronic Registration Systems, Inc. (“MERS”). Both motions pertain to the aspect of the Court’s September 13, 2012 Letter Opinion (the “Opinion”) granting in part and

denying in part the movants' respective requests for attorneys' fees and expenses. For the reasons stated below, I deny both motions.

In the Opinion, I held Defendant Claudia Wiltbank-Johnson ("Claudia") liable for reasonable attorneys' fees and expenses incurred in this action after March 8, 2011 to (1) Kathleen in the amount of \$5,035.54 and (2) HLC and MERS in an amount to be determined.¹ I based that ruling on my finding that Claudia has engaged in vexatious conduct and bad faith litigation since March 8, 2011.

On September 20, 2012, Kathleen moved for reargument on the Court's award of attorneys' fees. On September 24, HLC and MERS made a similar motion. Specifically, Kathleen, HLC, and MERS contend that the Court misapprehended the facts, which they assert demonstrate that Claudia has engaged in bad faith and vexatious conduct from the very outset of this litigation. Therefore, Kathleen, HLC, and MERS seek an award of all of the attorneys' fees and expenses they incurred in this action.

I. Legal Standard

A motion for reargument under Rule 59(f) will be denied "unless the Court has overlooked a decision or principle of law that would have controlling effect or the Court

¹ *Brown v. Wiltbank*, 2012 WL 4340654, at *3 (Del. Ch. Sept. 13, 2012). At the time of the Opinion, HLC and MERS had not filed an itemized list of their fees and expenses. Since then, they have submitted a detailed request for \$8,497.50 in fees and expenses incurred after March 8, 2011. Letter of Robert G. Gibbs, Defs. HLC & MERS' Att'y, to the Court, Ex. D. My ruling on this request is contained in a separate Order being entered concurrently with this Letter Opinion.

has misapprehended the law or facts so the outcome of the decision would be affected.”² This standard is flexible, and reargument is permitted if it can be shown that the Court’s misunderstanding of a factual or legal principle is both material and would have altered the outcome of its prior decision.³ A court will not grant a motion for reargument, however, if the motion is “merely a rehash of arguments already made.”⁴

II. Kathleen’s Motion

In order for this Court to award attorneys’ fees under the American Rule, the party against whom the award is sought must have acted in *subjective* bad faith.⁵ This Court also will not award attorneys’ fees against a party for failing to succeed on the merits, so long as that party stated a “conceivable” or “possible” cause of action.⁶

Claudia contended that her father, Arlington Wiltbank (“Arlington”), granted her a life estate in his Property. Ultimately, Court of Chancery Master Kim E. Ayvasian and this Court both found that Claudia had failed to prove that she had a life estate in the

² *Miles, Inc. v. Cookson Am., Inc.*, 677 A.2d 505, 506 (Del. Ch. 1995) (citation omitted).

³ *Blank v. Belzberg*, 2003 WL 21788086, at *1 (Del. Ch. July 24, 2003).

⁴ *Handloff v. City Council of Newark*, 2006 WL 2052685, at *2 (Del. Super. July 19, 2006); *Miles*, 677 A.2d at 506 (citation omitted).

⁵ *Arbitrium (Cayman Isl.) Handels AG v. Johnston*, 705 A.2d 225, 232 (Del. Ch. 1997).

⁶ *Nichols v. Chrysler Grp. LLC*, 2010 WL 5549048, at *4 (Del. Ch. Dec. 29, 2010).

Property. The fact that Claudia did not succeed on the merits of her claim, however, does not necessarily mean that she acted in bad faith or vexatiously.

In her initial application for attorneys' fees filed on July 31, 2012, Kathleen presented broad, generic claims of bad faith and vexatious conduct by Claudia dating back to 2006. After considering that application and the facts and circumstances surrounding the litigation of this matter, I determined that Claudia's conduct up to March 8, 2011 was not vexatious or in bad faith. This litigation was contentious and prolonged. Claudia had a conceivable cause of action, and she litigated it aggressively, first before Master Ayvasian, and then before me. Kathleen contends that Claudia's conduct from the beginning has been vexatious and in bad faith, but Master Ayvasian made no such finding in her Final Report. Furthermore, in the proceedings before me, it was not until after March 11, 2011, that the nature and tenor of Claudia's filings and other conduct became obstreperous and disruptive.

In contending that the Court misapprehended the facts, Kathleen's motion merely rehashes the arguments that she already made. In preparing the Opinion, I evaluated the facts and circumstances surrounding Claudia's litigation of this dispute, and concluded that Claudia's conduct was neither vexatious nor in bad faith until March 8, 2011. In her motion for reargument, Kathleen repeated her previous arguments more clearly and in greater detail, but that does not provide grounds for reargument or further consideration of the attorneys' fees issue. Therefore, Plaintiff's motion is denied.

III. HLC and MERS' Motion

HLC and MERS similarly have moved for reargument of the Court's decision to limit the award of their attorneys' fees to the period after March 8, 2011.

While a party dissatisfied with a decision of the Court may file a motion for reargument, any such motion must be filed in a timely manner. Court of Chancery Rule 59(f) states, in pertinent part: "A motion for reargument setting forth briefly and distinctly the grounds therefor may be served and filed within 5 days after the filing of the Court's opinion or the receipt of the Court's decision."

This Court issued its Opinion on September 13, 2012. Therefore, under Rule 6, any motion for reargument had to be filed by September 20. HLC and MERS, however, did not move for reargument until September 24. Consequently, HLC and MERS' motion was untimely, and I deny it on that basis.

IV. Conclusion

For the foregoing reasons, the motions for reargument of Kathleen and of HLC and MERS are denied.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

DFP/ptp