COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County Courthouse
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Date Submitted: August 12, 2013
Date Decided: November 21, 2013

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RE: *Preferred Investments, Inc. v. T&H Bail Bonds, et al.*
Civil Action No. 5886-VCP

Dear Counsel:

On July 24, 2013, I issued a Memorandum Opinion (the "Opinion") rendering my findings of fact and conclusions of law following a three-day trial in this matter.[1] In the Opinion, I found in favor of Defendant T&H Bail Bonds, Inc. ("T&H") on Plaintiff Preferred Investment Services, Inc.'s ("PISI") breach of contract claim and on T&H's breach of contract counterclaim because PISI materially breached the parties' exclusive

[1] *Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *1 (Del. Ch. July 24, 2013).

cash bail financing agreement (the "Agreement") before T&H engaged in any alleged breach. I held that T&H is entitled to recover damages for PISI's breach. I also found, however, that T&H did not prove its abuse of process counterclaim and that PISI is entitled to payment for certain loans, bail refunds, and bail forfeitures.[2] In addition, I held that Defendants were entitled to an award of eighty percent of the attorneys' fees and expenses they reasonably incurred in this litigation (the "Fee Award") because PISI had engaged in bad faith and vexatious litigation conduct throughout most, if not all, of this case. Furthermore, I instructed counsel for T&H to submit an affidavit setting forth the basis for Defendants' claimed reasonable attorneys' fees and expenses, and I required counsel for both parties to confer and submit a proposed form of final judgment.

On July 31, 2013, PISI timely filed a motion for reargument or clarification of the Opinion under Court of Chancery Rules 59(e) and 59(f). Defendants oppose the motion and further request that I order PISI to reimburse them for their attorneys' fees and expenses in responding to the motion.

For the following reasons, I deny PISI's motion in its entirety. I also deny Defendants' request for an award of attorneys' fees and expenses related to the motion.

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[2] On the latter point, I held that the parties could "decide to set off at least the $31,000 due to PISI . . . against the damages awarded to T&H for breach of contract." *Id.* at *28.

Finally, I specify the procedures to be followed by the parties for presenting issues related to the amount of the Fee Award and for facilitating entry of a final judgment.

I. PARTIES' CONTENTIONS[3]

As noted, PISI seeks, under both Rule 59(e) and Rule 59(f), reargument or clarification of the Opinion. As an initial matter, I consider PISI's invocation of Rule 59(e) misplaced. Motions under Rule 59(e) generally seek to "alter or amend a judgment." Such a motion "may be granted 'if the plaintiff demonstrates (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or to prevent manifest injustice.'"[4]

Here, only two aspects of PISI's motion conceivably could fall under Rule 59(e): (1) PISI's challenge of the Court's application of the doctrine of excuse; and (2) its disagreement with the Court's statement that it was "not convinced that PISI would have been willing to cure its failures under the Agreement by refraining from funding or assisting other cash bail agents."[5]

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[3] The seven Defendants in this action have responded to PISI's motion collectively; therefore, I refer to Defendants collectively as well.

[4] *Adams v. Calvarese Farms Maint. Corp.*, 2011 WL 383862, at *1 n.3 (Del. Ch. Jan. 13, 2011) (quoting *Chrin v. Ibrix, Inc.*, 2005 WL 3334270, at *1 (Del. Ch. Nov. 30, 2005)).

[5] *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *14.

To date, no judgment has been entered, but even if I assume that PISI intended to request that the Court alter or amend the Opinion, PISI has not articulated any persuasive reason for the Court to do so. As discussed *infra* Part II, PISI has not pointed to either an intervening change in controlling law or the availability of new evidence not previously available, nor has it identified any need to correct a clear error of law or to prevent manifest injustice. Thus, to the extent PISI bases its motion for reargument or clarification on Rule 59(e), I deny that aspect of the motion. Instead, I examine all of PISI's arguments as if they were presented under Rule 59(f).[6]

A. The Award of Attorneys' Fees and Expenses

PISI argues that "[t]he Court has granted reasonable attorney fees to Defendants but has not provided the parties a standard or process to determine whether attorney fees are reasonable."[7] Because of this perceived uncertainty, PISI further asserts that the Court's bases for granting attorneys' fees "make[] it unclear whether it applies to the entire litigation or certain parts of [it.]"[8] In particular, PISI questions six of the Court's

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6 This Court has held that motions for clarification are essentially motions for reargument. *See, e.g.*, *Naughty Monkey, LLC v. MarineMax Ne., LLC*, 2011 WL 684626, at *1 (Del. Ch. Feb. 17, 2011) (citing *Energy P'rs, Ltd. v. Stone Energy Corp.*, 2006 WL 2947483, at *5 (Del. Ch. Oct. 11, 2006)); *Cede & Co. v. Technicolor, Inc.*, 1994 WL 1753202, at *1 (Del. Ch. Dec. 6, 1994) (stating that a motion for clarification is a motion for reargument).

7 Pl.'s Mot. for Reargument or Clarification ("Pl.'s Mot.") § I.A.

8 Pl.'s Mot. § I.B.

findings in support of its conclusion that Defendants are entitled to an award of attorneys' fees and expenses. First, PISI contends that it is unclear from the Opinion whether the Court found its claims to be frivolous. PISI bases this argument on the following sentence from the Opinion: "I am not convinced that PISI knew when it brought this action that it had *no* chance of success on its claims."[9] Second, PISI states that its delayed production of electronic accounting records "was the subject of prior sanctions and it is unclear what bearing this has on additional sanctions."[10] Third (and fourth), PISI disputes the Court's reliance on PISI's undue complication of the production of accounting records and its refusal to provide bank statements and cancelled checks, arguing that those actions only applied to "narrow timeframe[s]."[11] On the latter issue, PISI notes that it obtained protective orders related to Defendants' efforts in acquiring those records. Fifth, PISI asserts that it should not be blamed for the delay of the trial from January 2011 to September 2012. Finally, regarding the Court's finding that PISI displayed a disregard for T&H's business and the actions cited to support that finding, PISI contends that these "actions occurred outside [the] litigation and had no bearing on

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9 *Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *27 (Del. Ch. July 24, 2013).

10 Pl.'s Mot. § I.B.2.

11 *Id.* § I.B.3–B.4.

the conduct of [it]. In addition, it is unclear what law, rule or standard PISI violated with these actions."[12]

PISI also challenges two matters regarding the scope of the Fee Award. PISI first argues that the Fee Award should not encompass those aspects of the litigation that were out of its control, such as the time PISI spent litigating Defendants' motions for sanctions, deposing Defendants' witnesses, and curing Defendants' failure initially to identify individual Defendant Jerzy Wirth and to produce all the documents PISI sought. PISI also seeks to exclude from the Fee Award time associated with the pre- and post-trial motions and briefing and the trial itself. Finally, PISI asserts that, just because the Court found unpersuasive its reading of the Agreement, that is no basis for the Court's further finding that PISI knowingly breached the Agreement before commencing this action.

Defendants advance several counterarguments. First, they read the Opinion as clearly indicating that the Fee Award applies to the entire duration of this litigation.[13] Second, Defendants contend that the aspects of PISI's motion pertaining to the

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12 *Id.* § I.B.6.

13 Defs.' Resp. to Pl.'s Mot. for Reargument or Clarification ("Defs.' Opp'n") 4 (citing *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *27 ("I therefore conclude that PISI's actions both in initiating this litigation and in prosecuting it through trial amounted to 'bad faith' conduct that supports shifting the cost of Defendants' attorneys' fees to PISI.")).

reasonableness of any specific fee awarded and the procedure to determine that amount are misplaced because the Court need not consider the reasonableness of the Fee Award Defendants actually request until counsel for Defendants file their fee application.[14] Finally, Defendants maintain that the standard for determining whether their fee application is reasonable is well established; therefore, no clarification from the Court is necessary.

B. Remaining Issues for Which PISI Seeks Clarification or Reargument

PISI also contends that the following issues require clarification: (1) how PISI's objection to the introduction of evidence of market rates of cash bails was treated; (2) how NC Cash's ("NCC") cash in PISI's drawer was treated; (3) whether PISI's *prima facie* case for breach of contract requires a fourth element, namely, proof of PISI's substantial compliance with the Agreement; and (5) how the common law doctrine of excuse based on a prior material breach operates in the context of a clear and unequivocal contractual provision regarding the effect of a material breach.

For their part, Defendants first contend that the Court's express reliance on market rate evidence in the Opinion, despite PISI's objection to, and pursuit of two motions *in limine* to preclude, such evidence, demonstrates that the Court rejected PISI's objection.

[14] To date, counsel for T&H has not submitted their affidavit detailing their fees to the Court. Defendants aver, however, that their counsel provided a draft fee application to PISI's counsel on July 26, 2013.

In addition, Defendants assert that PISI has demonstrated no fact or law misapplied or overlooked by the Court, and they cite as an example the Court's treatment of NCC's cash in PISI's drawer. Defendants note that, even if PISI segregated physically NCC's cash from its own, the outcome of the case would not change because physical commingling of the two entities' funds was not issue determinative. Thus, the Court's treatment of the issues regarding NCC's cash provides no basis for reargument under Rule 59(f). Finally, Defendants argue that the remaining aspects of the Opinion that PISI questions or criticizes all relate either to issues that already have been litigated or to arguments that were made at trial and rejected by the Court. Hence, those matters do not warrant clarification.

In addition, PISI seeks reargument as to the following six findings in the Opinion, claiming that they were either unsupported by the record or were otherwise inappropriate: (1) that the bail financing premium PISI charged T&H was "high"; (2) that the high premium was granted in exchange for exclusivity; (3) that exclusivity goes to the heart of the Agreement; (4) that denying rumors is equivalent to denying a clear and specific allegation; (5) that PISI's principal, Edwin Swan, admitted that PISI had an arrangement with Mark's Bail Bonds ("MBB"); and (6) that PISI would not have been willing to cure

its failures under the Agreement, which had the effect of improperly shifting the burden of proof to PISI on Defendants' related affirmative defense.[15]

Defendants primarily argue that the Court should deny PISI's motion because "none of the points [PISI] raises in its requests for reargument differ from arguments raised before[,] during, or after trial."[16] As to finding (1), Defendants emphasize that bail agents Marcus McGriff, John Donahue, and John Purnell "all testified as to the bail premiums that they were paying to [PISI] . . . demonstrating that [PISI] was charging T&H far more than it was charging T&H's competitors."[17] Defendants contend that, on finding (2), the testimony of Wirth and Ken Moye demonstrates that Ted Pridgen turned down their bail financing offers "because he understood exclusivity to be a trade-off for the high bail premium."[18] Regarding finding (3), Defendants note that T&H's principal, Pridgen, testified "that he considered exclusivity to be at the heart of the Agreement," and, although Swan disagreed with that statement at trial, he admitted to it during his deposition.[19] As to finding (4), Defendants cite evidence that Swan repeatedly denied

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15 For brevity's sake, I refer to these challenged findings below as numbered.

16 Defs.' Opp'n 5.

17 *Id.* at 6.

18 *Id.*

19 *Id*.

both rumors and direct accusations that he had engaged in bail financing of entities other than T&H. Thus, Defendants deny that the Court misapprehended these facts. On finding (5), Defendants note Swan's admission that "the funds provided to [MBB] were booked as a loan receivable on [PISI's] books."[20] Moreover, Defendants contend that the exact nature of the PISI-MBB relationship is irrelevant because the Court found that PISI breached the Agreement by taking actions that helped allow MBB to post cash bails. Finally, as to finding (6), Defendants argue that the Court relied correctly on the "*Restatement (Second) of Contracts* regarding the possibility of cure, and the controlling case law, which excuses a party from performance where there is no possibility of cure."[21]

II. ANALYSIS

A. Standard for Reargument Under Rule 59(f)

The standard applicable to a motion for reargument is well settled. To obtain reargument, the moving party has the burden to demonstrate either that the court has overlooked a controlling decision or principle of law that would have controlling effect, or that the court has misapprehended the facts or the law so the outcome of the decision

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[20] *Id.* at 7 (citing Tr. 299–302).

[21] *Id.* (citing *Restatement (Second) of Contracts* § 241 (1981); *Cornell Glasgow, LLC v. La Grange Props., LLC*, 2012 WL 6840625, at *13–14 (Del. Super. Dec. 7, 2012)).

would be different.[22] A misapprehension of the facts or the law must be both material and outcome determinative of the earlier litigation for the movant to prevail.[23] Moreover, motions for reargument must be denied when a party merely restates its prior arguments.[24]

B. The Award of Attorneys' Fees and Expenses

As noted above, PISI contends that, in granting the Fee Award, the Court erred both in not providing "a standard or process to determine whether attorney[s'] fees are reasonable" and in purportedly leaving unclear whether the award applies to the entire litigation or only to parts of it. On the first point, PISI misunderstands the Court's Opinion. Consistent with this Court's normal practice,[25] the Opinion concludes as follows regarding the Fee Award:

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[22] *See, e.g.*, *Medek v. Medek*, 2009 WL 2225994, at *1 (Del. Ch. July 27, 2009); *Reserves Dev. LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, at *1 (Del. Ch. Dec. 31, 2007); *Nevins v. Bryan*, 2006 WL 205064, at *2 (Del. Ch. Jan. 20, 2006).

[23] *See, e.g.*, *Aizupitis v. Atkins*, 2010 WL 318264, at *1 (Del. Ch. Jan. 27, 2010); *Medek*, 2009 WL 2225994, at *1; *Serv. Corp. of Westover Hills v. Guzzetta*, 2008 WL 5459249, at *1 (Del. Ch. Dec. 22, 2008).

[24] *Guzzetta*, 2008 WL 5459249, at *1; *Reserves Dev. LLC*, 2007 WL 4644708, at *1; *Nevins*, 2006 WL 205064, at *3.

[25] *See, e.g.*, *Underbrink v. Warrior Energy Servs. Corp.*, 2008 WL 2262316, at *19 (Del. Ch. May 30, 2008) ("Plaintiffs shall submit a detailed request for attorneys' fees and expenses, together with any supporting materials, within ten [] days from the date of this opinion."); *La. State Emps.' Ret. Sys. v. Citrix Sys., Inc.*, 2001 WL

> I also award Defendants 80% of the attorneys' fees and expenses they reasonably incurred in connection with this litigation. Counsel for T&H promptly shall submit an affidavit setting forth, in detail, the basis for its claimed reasonable attorneys' fees and expenses in this action.
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> Counsel shall work cooperatively to prepare and file promptly a proposed form of final judgment.[26]

The standard for reviewing Defendants' request for a specific amount of attorneys' fees, therefore, will be reasonableness.

The process for evaluating any disputes as to reasonableness will be that counsel for T&H and the other Defendants[27] will submit an affidavit or affidavits setting forth, in detail, their request for an amount of fees and the supporting explanations. After counsel's affidavit(s) has been filed, PISI will have ten days to state any objection to the reasonableness of the amounts claimed. To the extent there are disputes, the Court will resolve them and insert the final amount of fees it determines to grant in the final

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1131364, at *3–4 (Del. Ch. Sept. 19, 2001); *In re Dunkin' Donuts S'holders Litig*., 16 Del. J. Corp. L. 1443, at *1453 (Del. Ch. Nov. 27, 1990).

[26] *Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *28 (Del. Ch. July 24, 2013).

[27] The concluding portion of the Opinion directed counsel for T&H to submit the required affidavit. In the Opinion, however, I awarded attorneys' fees and expenses to all Defendants, not just to T&H. *Id.* Moreover, counsel for T&H also represents all of the other Defendants in this action. It is more correct, therefore, to require counsel for T&H and the other Defendants to file an appropriate affidavit documenting the fees and expenses Defendants intend to claim.

judgment. This is the Court's normal procedure and it amply should protect PISI's right to challenge the reasonableness of the requested fees. In this case, counsel for Defendants have not yet submitted their fee application to the Court; therefore, I reject PISI's objections as to the reasonableness of the fees as premature, and, with one exception, discussed *infra* Part II.C., I withhold judgment on those objections until counsel for T&H and the other Defendants submit their fee application and the objection process just outlined runs its course.

PISI's claimed confusion as to whether the Fee Award applies to the entire litigation stems from its focusing on a handful of statements in the Court's analysis in isolation and failing to consider those statements in the context of the full Opinion. Essentially, PISI's motion for clarification appears to request that this Court pare back the Fee Award so that it applies only to those stages in the litigation that PISI initiated and considers significant. This argument is unavailing. Having presided over every aspect of this litigation, I concluded in the Opinion that, at a minimum, PISI had prosecuted this action from a very early stage in bad faith.[28] Because this holding explicitly applied to

[28] *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *27. The Opinion recites many of the bases for my conclusion, but is not exhaustive. On several occasions before and during the litigation, for example, Swan knowingly engaged in secretive activities that violated the Agreement by assisting others in connection with their cash bail financing and lied about or sought to cover up inculpatory evidence of the same. *See id.*

the duration of the litigation, the Court need not delineate all the individual actions that caused it to reach its conclusion.[29] PISI's arguments for a more limited Fee Award either

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In addition, during the pendency of the litigation, Swan admittedly took steps to appropriate the goodwill associated with the T&H name by reserving "T&H Bail Bonds, Inc." with the Delaware Division of Corporations. He said he took that action because "he expected Pridgen to have to change the name of Pridgen's business once Swan began operating a cash bail business because Pridgen 'would be using [Swan's] name.'" *Id.* (citing Swan Dep. 213–14). Then, after Swan reserved the name "T&H Bail Bonds, Inc.", PISI's attorneys sent a threatening cease and desist letter to Pridgen designed to convince Pridgen to stop using the different name "T&H Cash Bails." *Id.* at *27 n.243 (citing JX 43).

I take judicial notice of the fact that reservation of a corporate name under the Delaware General Corporation Law does not of itself entitle the holder to preclude anyone else from using a confusingly similar name in commerce. Rather, it entitles the holder to object to another person's registering an indistinguishable name with the Division of Corporations. 8 *Del. C.* § 102(e); *Trans-Americas Airlines v. Kenton*, 491 A.2d 1139, 1142 (Del. 1985) ("The Secretary of State has only one statutory duty [under § 102(e)]: to ensure, in the exercise of his discretion, that a new corporate name can be distinguished on the records of the Division of Corporations from those names previously registered."). Whether any property rights inhere to a corporate name "rests solely in the field of general law dealing with unfair competition." *Standard Oilshares, Inc. v. Standard Oil Gp., Inc.*, Del. Ch., 150 A. 174, 179 (De. Ch. 1930). Here, the evidence showed that Swan knew that Pridgen had operated a cash bail business in commerce using the name "T&H Cash Bails" for more than twenty years. *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *27. Swan's and PISI's efforts during the relevant time period to reserve the name "T&H Bail Bonds, Inc." and to use that fact to hinder T&H's business while the Agreement was in place supports an inference that PISI's parallel actions in this litigation were taken in bad faith.

[29] *See Johnston v. Arbitrium (Cayman Is.) Handels AG*, 720 A.2d 542, 547, (Del. 1998) (noting that this Court "has broad discretion in fixing the amount of attorney fees to be awarded"). Furthermore, I remind PISI that, in the Opinion, I held that Defendants are entitled to eighty percent of the attorneys' fees and expenses they

involve a rehash of previous arguments or otherwise fail to meet the requirements for relief under Rule 59(f).

I agree with PISI that it should not suffer additional sanctions for its delayed production of electronic accounting records. On August 7, 2012, I awarded to T&H $4,000 in attorneys' fees and costs that it incurred in litigating its motions to compel and for a rule to show cause related to this issue.[30] If that award has been paid in full, then PISI is entitled to have $4,000 deducted from the Fee Award granted in the Opinion.

C. Remaining Issues for Which PISI Seeks Clarification or Reargument

After carefully considering the parties' arguments regarding the remaining issues for which PISI seeks clarification or reargument, I conclude that PISI's request fails because it does not demonstrate that the Court misapprehended any facts or law or that a reconsideration of these issues would lead to a different result. As Defendants point out, most of PISI's contentions merely raise arguments already presented to and rejected by

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reasonably incurred in this litigation, accounting expressly for the fact that PISI prevailed on some aspects of the litigation. *Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *27.

30 *Preferred Inv. Servs, Inc. v. T & H Bail Bonds, Inc.*, C.A. No. 5886-VCP (Del. Ch. Aug. 7, 2012) (ORDER).

the Court, or are otherwise not reflective of outcome determinative issues, negating the need for reconsideration.[31]

The only issue that may warrant additional discussion relates to PISI's argument that "it is unclear from the Court's opinion how the common law doctrine of excuse due to prior material breach operates in the context of a clear and unequivocal contractual provision regarding the effect of a material breach."[32] I first note that PISI sued T&H for an alleged material breach of the Agreement. By way of defense, T&H pled the existence of a prior material breach. As explained in the Opinion, "PISI's prior material breach excused [T&H] from having to perform under the Agreement. Hence, PISI's challenges to the adequacy of the termination notice and the absence of an opportunity to cure are beside the point."[33] That is, to defeat PISI's claim of breach, T&H had to show the existence of a prior material breach, but it did not have to prove that it gave notice of and an opportunity to cure that breach.

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[31] For example, the Court's rejection of PISI's interpretation of the Agreement as unpersuasive is complementary to, not inconsistent with, the additional finding that PISI's principal, Swan, took many of his challenged actions with the knowledge that he was violating the Agreement. *See Preferred Inv. Servs., Inc.*, 2013 WL 3934992, at *15–17. In addition, I agree with Defendants that the outcome of this case would not change based on a finding that PISI did not physically commingle funds with NCC. *Id.*

[32] Pl.'s Mot. § I.H.

[33] *Preferred Inv. Servs., Inc. v. T & H Bail Bonds, Inc.*, 2013 WL 3934992, at *22 (Del. Ch. July 24, 2013).

Nevertheless, PISI appears to suggest that the Court's reliance on the principles of the doctrine of excuse conflict with Paragraph VII(e) of the Agreement. That Paragraph reads: "In addition to [T&H]'s termination rights set forth in paragraph VII(d), either party may terminate this agreement after giving the other party 10 days notice and opportunity to cure if the other party materially breaches this agreement."[34] As noted, PISI argued the same point at trial; its motion for reargument or clarification does not identify any new law or facts or any misapprehension on the part of the Court. Moreover, PISI has failed to advance any argument as to notice and cure that would cause the outcome to be any different on reconsideration. As to T&H's affirmative claims, the evidence shows that Pridgen confronted Swan on multiple occasions about Pridgen's belief that PISI was violating the exclusivity provisions of the Agreement. On each occasion, Swan denied that any violation occurred. In one instance, Swan initially denied financing a cash bail for one Tybrie Briscoe, but later admitted to financing that bail after Pridgen indicated that he had evidence that Swan's state identification was used to post the bail. These facts, together with Swan's strained interpretation of the Agreement and ultimate admission under oath that he knew certain of the actions he was accused of taking violated the Agreement, provide ample grounds for my conclusion that, even if the

[34] JX 5 § VII(e).

notice and cure requirement technically was not met by T&H, any attempt to satisfy that requirement more formally would have been futile.

I also find that PISI's contentions in favor of reargument based on mistaken conclusions of fact or law fail for essentially the same reasons. That is, PISI has not demonstrated that the Court misapprehended any facts or law or that a reconsideration of these issues would lead to a different result. Furthermore, I agree with Defendants that, as to most of these disputed points, PISI seeks only to reargue issues that it already has litigated.

Generally, PISI disagrees with the Court's weighing of credible evidence, but that does not suggest a misapprehension of the facts. Several examples are informative on this issue. As Defendants point out, three witnesses testified to paying PISI lower bail premiums than T&H paid. In addition, although PISI's principal denied at trial that exclusivity was at the heart of the Agreement, he testified to the contrary during his deposition. Specifically, Swan testified as follows at his deposition: "once I got involved and got to know the business[, exclusivity] was important."[35] Thus, far from being unsupported, the Court's findings regarding exclusivity were confirmed by the sworn testimony of PISI's principal and several credible local industry players.

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[35] Swan Dep. 105.

Finally, under the Agreement, PISI could not directly or indirectly assist entities other than T&H to post cash bails. Because PISI took such actions that helped MBB while the Agreement was in place, whether PISI and MBB enjoyed a formal, ongoing business relationship is irrelevant to the Court's finding that these actions violated the Agreement. Thus, the Court did not misapprehend any material facts or law regarding PISI's assistance to MBB.

III. CONCLUSION

For all of the reasons stated in this Letter Opinion, I deny PISI's motion for reargument or clarification. I also deny Defendants' request for reimbursement of the attorneys' fees and expenses they incurred in litigating that motion.[36]

Furthermore, within ten days of the filing of this Letter Opinion, counsel jointly shall file with the Court a proposed form of final judgment consistent with the Opinion and with this Letter Opinion. The proposed form of final judgment shall include a blank space for the Court to award a specific dollar amount of attorneys' fees and expenses. If the parties cannot agree on any aspect of the proposed final judgment other than the amount of attorneys' fees and expenses, counsel promptly shall file their competing forms of final judgment and briefly explain the bases for any points of disagreement. Also within ten days of the filing of this Letter Opinion, counsel for Defendants shall file an affidavit(s) setting forth, in detail, the basis for their claimed

[36] Although I deny PISI's motion in its entirety, I am not persuaded that PISI filed its motion in bad faith or solely to delay entry of final judgment, as Defendants aver.

reasonable attorneys' fees and expenses. Within ten days of the filing of Defendants' counsel's affidavit(s), PISI may file a letter setting forth, in detail, any objections to Defendants' claimed attorneys' fees and expenses.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

DFP/ptp