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**Re: *Robert T. Wirt and Lorraine S. Wirt v.
William A. Matthews, William A. Matthews
Associates, Inc. and Robert L. Matthews, Jr.*
Civil Action No. 1999-12-271
Letter-Opinion on William A. Matthews and
William A. Matthews Associates, Inc.
Motion for Reargument:
Granted in Part; Denied in Part**

Dear Counsel:

On February 14, 2002 defendants William A. Matthews and William A. Matthews Associates, Inc. ("William Matthews, Inc.;" "William Matthews;" or collectively "the co-defendants") filed a Motion for Reargument ("the Motion") pursuant to CCP Civ. R. 59(e).

Mr. Kafader, on behalf of his clients Robert T. Wirt and Lorraine S. Wirt ("the Wirts") filed an answer to the Motion on March 25, 2002. Mr. Franta did not participate in the post-trial briefing as his client, Robert L. Matthews, Jr., was dismissed pursuant to the Court's February 7, 2002 Final Opinion and Order. In a separate letter dated January 29, 2002 Mr. Kafader withdrew and/or reaffirmed his clients' position not to pursue the negligence allegations that appear in Count III of the Complaint. This is the Court's decision on co-defendants' Motion.

The law is well settled that a Motion for Reargument is the proper device for seeking reconsideration by the Court of its findings of fact, conclusions of law or judgment after a bench trial. *See, Hessler, Inc. v. Farrell*, Del. Supr., 260 A.2d 1701 (1969). The granting or denial of a Rule 59(e) motion is within the sound discretion of the trial court. *Brown v. Weiler*, Del. Supr., 719 A.2d 489 (1998). The Court notes that co-defendants have failed to comply with CCP Civ. R. 59(e) by filing and serving their Motion “within 5 days after the filing of the Court’s Opinion and Decision.” However, in the interest of justice, the Court shall address and consider the Motion.

I. The Grounds For The Motion

Co-defendants have moved for reargument on several grounds. They argue first that they were not granted an opportunity to file a post-trial memorandum. That issue is now moot.

The second issue raised by the co-defendants is that the Court relied on certain testimony to support the fraud and punitive damage claims which they believe was immaterial and irrelevant. According to the co-defendants, plaintiffs’ counsel’s statement allegedly on the record, that he was not relying on any post-construction conversations between Mr. Wirt and the corporate defendant, Matthews Associates, Inc. was considered by the Court. Co-defendants assert that Mr. Kafader withdrew questions at trial on these issues and represented on the record that he would not introduce evidence of post-construction discussions. Co-defendants, therefore, believe the Court relied on certain irrelevant testimony, “though a full record was not made.”

Third, William Matthews’ contends that while William Matthews accepted overall responsibility for the drawings submitted to New Castle County by Robert Matthews, he did not prepare the drawings and did not make the mistake Robert allegedly made by placing a window on the drawings approved by New Castle County. The ventilation (window) issue was central to the Court’s finding of Consumer and common law fraud in its Final Opinion and Order.

Fourth, William Matthews alleges that since the Court found that Robert Matthews did not commit fraud the Court must be an

inference to the benefit of the company and William Matthews individually.

Fifth, William Matthews asserts that the Court relied on testimony from William Matthews about vents in the block of the addition to support the decision finding of fraud but this requirement did not exist at the time of construction.

Sixth, William Matthews argues that the Court entered a finding of punitive damages without consideration of standards for such award.

Seventh, co-defendants allege the judgment entered by the Court in its Final Order and Opinion on the contract against Matthews personally pierced the corporate veil which lies exclusively in the jurisdiction of the Chancery Court.

Finally, William Matthews alleges that there is no evidence to support the conclusion that William Matthews knew representations to the Wirts to be false and concealed the crawlspace. Therefore, co-defendants argue that no evidence supports an award of fraud damages in the amount awarded.

II. Piercing The Corporate Veil

First, it is clear to the Court that piercing the corporate veil is an equitable remedy and lies within the exclusive jurisdiction of the Chancery Court. Therefore, no compensatory judgment for breach of contract against William Matthews, individually, lies within the Court of Common Pleas. The Court grants reargument on this issue. *Sony v. Sachs*, Del. Supr., 314 A.2d 104 (1973); *Park Oil, Inc. v. Getty Refining & Marketing Co.*, Del. Supr., 407 A.2d 533 (1979); *Paulie Petroleum, Inc. v. Continental Oil Co.*, Del. Supr., 239 A.2d 629 (1968).

III. Discussion Of The Remaining Issues

For the reasons set forth below, the Court denies reargument on the remaining issues set forth in the Motion. The Court shall address the balance of these issues raised in co-defendants' Motion for

Reargument as they appear in counsels' post-trial briefs. The Court found in its written Final Opinion and Order that William Matthews committed civil common law and consumer fraud. 6 Del. C. § 2511, et seq. William Matthews argues in his post-trial brief that Robert Matthews, an officer and shareholder of the corporation, prepared the subject drawings for the Wirt's addition to their residence and submitted them to New Castle County. Of significance in the approved drawing is the 18 inch crawlspace and window which were placed on the drawings by an agent or employee of New Castle County and subsequently approved. William Matthews in his post-trial brief argues that because the Court dismissed Robert Matthews, Jr. that William Matthews therefore cannot be found civilly responsible for the fraud.

It is clear that the contract between the Wirts and William Matthews Associates, Inc. provided the following:

All materials guaranteed to be as specified and the above work to be performed in accordance with the drawings and specifications submitted for the above work and completed in a substantial workmanlike manner . . .

At trial it was also clear to the Court that William Matthews was aware of the requirement for a gap between a finished grade of the crawlspace and the joist. It is also clear that William Matthews was also aware of the requirement for ventilation under floor joists in order that air could circulate and prevent rot in the addition he constructed on the Wirts' residence. It is also clear that William Matthews actually performed all the concrete block work for the Wirt addition as depicted in State's Exhibit "3" and which would have contained the 18" crawl space. As the Court found in its February 7, 2002 Opinion, William Matthews could not explain, having been aware of these requirements, why he did not dig out the full 18 inches for the crawlspace. As the Court noted in page 12 of the Opinion, William was "fully aware of the requirement" to dig out 18 inches as required by the plaintiff to approved by New Castle County. At trial, William Matthews also testified that it was reasonable for the Wirts to rely on his representation on the subject contract that the addition would be built according to the New Castle County Code and the plans and specifications. William Matthews also testified at trial that he never informed the Wirts about the 18 inch requirement for the crawlspace that were on the plans as approved by New Castle County.

William Matthews' testimony at trial was somehow the ventilation requirement on the approved plans "somehow got forgotten from the job."

The Law

Fraud requires at the time of representations made it was false or made with reckless indifference to its truth. *Stevenson v. Capano Development Co.*, Del. Super., 462 A.2d 1069, 1074 (1983).

The Delaware Consumer Fraud Act was discussed by the Delaware Supreme Court in *Stevenson v. Capano Development Co. Inc.*, Del. Supr., 462 A.2d1069 (1983). Common law fraud, "or deceit" consists of (1) a false representation usually one of fact, made by defendant; (2) the defendant's knowledge or belief that the representation was false or was made with reckless indifference to the truth; (3) an attempt to induce the plaintiff to act or refrain from acting; (4) the plaintiff's action or inaction taken in just ably reliance upon the representation; (5) damage to the plaintiff as a result of such reliance.

As pointed out in Mr. Kafader's January 29, 2002 filing with this Court, the *Stephenson* decision discussed the differences between common law fraud and consumer fraud at page 1074:

The Consumer Fraud Act differs from the traditional legal and equitable actions in three ways. First, the definition of unlawful practices [6 Del. C. § 2513(a)] incorporates the principle that a negligent misrepresentation is sufficient to violate the statute. The defendant need not have intended to misrepresent or to make a deceptive or untrue statement. Instead, the only intent requirement of the Act is that in omitting or concealing a material fact, the defendant must have intended others to rely on the omission or concealment. Second, the plaintiff, traditionally had to demonstrate that he reasonably or justifiably relied on the defendant's statements. An unlawful practice under § 2513(a), however is committed, regardless of actual reliance of the plaintiff.

Finally, any misrepresentation had to be made with the intent to induce action or inaction by the plaintiff. The statute does not require proof of such intent.

Clearly, the trial Court Opinion issued on February 7, 2002 found William Matthews and William Matthews, Inc. by a preponderance of evidence committed consumer fraud and the Wirts should be made whole for his material misrepresentations outlined above in the contract language and his unsafe and unworkmanlike construction of the Wirt addition to their residence.

Clearly the trial record also supports the conclusion by a preponderance of the evidence that William Matthews' and the corporation's conduct constituted common law fraud for the reasons listed above. All five (5) elements listed above under the common law fraud requirements have been satisfied by a preponderance of the evidence. William Matthews was aware that the contract and specifications required construction according to the approved plans. William Matthews was aware of the fact that plans and specifications showed a crawlspace and ventilation in order to be approved by New Castle County. William Matthews failed to disclose to the Wirts that the house was actually being constructed without the needed ventilation under the joists or that the approved 18" crawl space was built as requested. This inaction caused the Wirts to rely on his representations in the signed contract that the Wirts' addition would be constructed according to plans and specifications as submitted to New Castle County.

The Court discounts William Matthews arguments in his post-trial brief that the fraud was not discovered until approximately six (6) years later. The fact that William Matthews' fraudulent conduct was not discovered by the Wirts for six (6) years does not mitigate or ameliorate the fact that he actually committed the fraud. The fact that William Matthews fraudulent conduct was not discovered for this time period should not absolve him of his fraudulent conduct. The Court also affirms based upon the facts and testimony that 6 Del. C. § 2511 et seq. elements for consumer fraud have been proven by a preponderance of the evidence.

The Court must determine whether compensatory damages as awarded by the Court on February 7, 2002 were actually established

by a preponderance of evidence for both common law and consumer fraud against William Matthews and the corporation. In *Langford Signs, Inc. v. James Tennefoss*, 198 Del. C.C.P. LEXIS 4 (1988), the Court ruled the measure of damages for fraud is “generally limited to those which are direct and proximate result of false representation or actual ‘out-of-pocket’ loss.” Clearly the Wirts have proven at trial for the reasons set forth in the Court’s February 7, 2002 Opinion that as a result of William Matthews’ false representations, and the corporation, they sustained the damages as awarded by the Court.

IV. Punitive Damages

Punitive damages may also be awarded when fraud is “gross, oppressive, or aggravated or where it involved a breach of trust or confidence.” *E.I. du Pont v. Florida Evergreen Foliage*, Del. Supr., 744 A.2d 457 (1999). Punitive damages are intended to serve a dual purpose – to punish the wrongdoer and to deter him and others from similar conduct. *Strauss v. Biggs*, Del. Supr., 525 A.2d 992 (1987); *Jardel*, 523 A.2d at 529. Clearly, by failing to disclose to the Wirts either the 18” crawl space or construction as approved by New Castle County is a breach of trust or confidence proven by a preponderance of the evidence by the corporation and William Matthews, individually. Under *Jardel Company v. Hughes*, Del. Supr., 523 A.2d 518 (1987), the record also supports the conclusion by a preponderance of the evidence that these actions and representations of William Matthews were made with “reckless indifference” to the consequences of his conduct by building an addition to the house which was clearly unworkmanlike and had to be entirely rebuilt. Under either theory of fraud, as a direct result of William Matthews’ conduct, the under floor crawl space was not disclosed as the plans required or properly vented and caused the wood to rot and floor to settle. Ultimately, the entire addition had to be replaced.

V. Post Construction Testimony Between William Matthews And The Wirts

Even if the Court strikes the post-construction testimony between the Wirts and William Matthews, the Court finds that consumer law and common law judgment against William Matthews was proven by

a preponderance of evidence. Contrary to his post-trial brief, the Court finds based upon William Matthews experience in the industry, his tenure as president of the corporation, and his experience building construction residences and homes for 15 years that William Matthews' representations to the Wirts were false when the plans when approved contained the 18" crawlspace and window and he failed to build it or disclose these requirements to the plaintiffs.

VI. Should William Matthews Be Dismissed Because Robert Matthews Is No Longer A Defendant?

William Matthews has raised two (2) issues relating to the dismissal of Robert Matthews, Jr. First, in paragraph (d), co-defendants argue in their Motion that the Court relied on Robert Matthews' pictures in dismissing him from the action and this inference must "inure to the benefit of the company and William Matthews." Second, in paragraph (c) of their Motion, co-defendants argue that while "William accepted overall responsibility" Robert Matthews, Jr. "prepared and presented the inaccurate drawing [plans and specifications] to the County. Co-defendants argue that Robert Matthews, Jr. "through an apparent mistake" placed a window on the drawing."

Co-defendants misconstrue and misinterpret the Court's February 7, 2002 Final Order and Opinion. The Court entered a finding of fraud against co-defendants because William Matthews was president of the company and "overall had responsibility" for the construction of the addition. As the Court found, he was aware of the 18 inch requirement of the crawl space as required by the approved drawings. William was also fully aware of the ventilation requirements. William Matthews testified at trial he alone actually installed the concrete block which was subject to the 18" requirement by the approved plans by New Castle County. William testified it was reasonable for the Wirts to rely upon his representations that the addition would be built according to New Castle Code. William had 15 years of experience buildings homes and additions, unlike his brother. While it was William's specific responsibility to build according to approved plans, the 18" ventilation space "somehow got forgotten on the job." This is conduct was not attributed to Robert Matthews, Jr. and was clearly attributable to William Matthews.

**VII. Should A Bifurcated Hearing Be Held
On Punitive Damages?**

Co-defendants cite *Strauss v. Biggs*, Del. Supr., 525 A.2d 992 (1987), for their position, as the Court understands, that a separate, bifurcated evidentiary hearing should be held on punitive damages. The Court finds upon a reading of that decision that while evidence of defendants' wealth is clearly admissible evidence, the Court is not required to hold such a separate hearing and DENIES reargument on this issue.

**VIII. Were The Plans Submitted And Approved
To the County A Mistake?**

Finally the Court has not found the plans were a mistake. No argument on that issue was presented at trial and shall not be addressed here.

A form of Order is attached hereto.

IT IS SO ORDERED this 9th day of April, 2002.

John K. Welch
Associate Judge

JKW/vh
attachment

cc: Ms. Barbara Dooley, Civil Division (w/original of attachment)

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

ROBERT T. WIRT and)	
LORRAINE S. WIRT,)	
)	
Plaintiffs,)	
)	
v.)	Civil Action No. 1999-12-271
)	
WILLIAM A. MATTHEWS,)	
Individually, WILLIAM A.)	
MATTHEWS ASSOCIATES, INC.,)	
a Delaware corporation, and)	
ROBERT L. MATTHEWS, JR.,)	
)	
Defendants.))	

AMENDED ORDER

1. Judgment is entered against William A. Matthews Associates, Inc. for breach of contract, failure to perform in a commercially reasonable manner and workmanlike manner and failing to perform in accordance with the contract specifications as well as New Castle County Building Code in the amount of Twenty-One Thousand Nine Hundred Seventy-Five Dollars (\$21,975.00) plus costs.

2. Judgment is entered against William A. Matthews and William A. Matthews Associates, Inc. for consumer and common law fraud for Ten Thousand Dollars (\$10,000.00) plus costs.

3. Punitive damages are awarded against William A. Matthews and William A. Matthews Associates, Inc. in the amount of Five Thousand Dollars (\$5,000.00).

4. Post-judgment interest pursuant to 6 Del. C. § 2301 shall accrue from the date of the filing of the Complaint.

5. Robert L. Matthews, Jr. is dismissed from the action as a co-defendant.

IT IS SO ORDERED this 9th day of April, 2002.

John K. Welch
Associate Judge