

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

JORREL BESSON)	
)	
Plaintiff,)	
)	
v.)	C.A. No.: 04-02-150
)	
PRICE NEW CASTLE,)	
)	
Defendant.)	

Date Submitted: April 19, 2004

Date Decided: August 31, 2004

Brian E. Lutness, Esquire
Silverman, McDonald & Friedman, P.A.
1010 N. Bancroft Parkway
Suite 22
Wilmington, DE 19805
Attorney for Plaintiff

M. Jean Boyle, Esquire
Tybout, Redfearn & Pell
300 Delaware Avenue, Suite 1100
P.O. Box 2092
Wilmington, DE 19899-2092
Attorney for Defendant

ORDER AND OPINION ON PLAINTIFF'S MOTION FOR RECONSIDERATION

On April 7, 2004, Plaintiff Jorrel Besson filed a Motion for Reconsideration pursuant to CCP Civ. R. 59(e) of this Court's order regarding Defendant's Motion to Dismiss. Defendant, Price New Castle, filed a response to the motion on April 19, 2004. This is the Court's decision on Plaintiff's Motion.

In the way of history, this action was filed by Plaintiff in the Court of Common Pleas on February 4, 2004. Defendant's answer of February 12, 2004, first raised the issue of Plaintiff's failure to plead negligence and special damages with particularity. On March 9, 2004, Defendant filed a Motion to Dismiss based on the complaint's deficiencies. At no time prior to the motion hearing was a formal motion to amend the complaint sought by Plaintiff. The Motion to Dismiss was heard by the Court on April 2, 2004, just three days shy of the date scheduled for trial in the matter. After hearing oral argument by both parties, this Court granted Defendant's Motion to Dismiss with prejudice for failure to plead negligence and special damages with particularity pursuant to CCP Civ. R. 9(b) and (g).

The applicable standard on a motion for reconsideration or reargument is well settled. A party seeking reargument must show the court misapprehended the law or the facts in a manner that would change the outcome of its decision if it were correctly and/or fully informed. *Steadfast Ins. Co. v. Eon Labs MFG., Inc.*, 1999 Del. Super. LEXIS 339, No. 98 C-01-058-SCD, Del Pesco, J., 1999 WL 743982 (Aug. 18, 1999). A motion for reargument will be denied when it relies on grounds not raised in the original proceedings or when it merely advances the same matters that were already considered in the original proceeding. *Id.* at 1. 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 contentions raised by the Plaintiff in his motion seeking reconsideration were considered at the time the Court heard the Motion to Dismiss on April 2, 2004. The Court finds that it properly dismissed Plaintiff's complaint for failure to plead negligence and damages with particularity. *Sheing v. Remington Arms Co.*, Del. Super., 108 A.2d

364 (1954); *Myer v. Dyer*, Del. Super., 542 A.2d 802 (1987). While dismissal was the appropriate remedy in this case, the question then becomes whether or not the complaint should be have been dismissed with prejudice. The Court finds that the complaint should have been dismissed without prejudice, allowing Plaintiff an opportunity to file a new civil action. *Eley v. Kearney*, 2001 WL 1867198 (Del. Super.).

For the foregoing reasons, Plaintiff's Motion for Reargument is denied; however, the Court will amend its Order dismissing the complaint with prejudice. The complaint is hereby dismissed without prejudice.

IT IS SO ORDERED this 31st day of August, 2004.

Joseph F. Flickinger, III
Associate Judge