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**Re: Plaintiff's Motion for Reargument
Delaware Broadcasting Co. v. Maynard's Piano Bar Restaurant, LLC
Case. No. 2002-04-125**

LETTER OPINION

Dear Counsel:

This is the Court's decision on Plaintiff Delaware Broadcasting Co.'s Motion for Reargument.

The Court granted Defendant Maynard's Piano Bar Restaurant, LLC's Motion to Dismiss after a hearing on the motion on October 10, 2003. Plaintiff filed a Motion for Reargument on October 17, 2003. Attached to the motion was a proposed form of Order however, no Certificate of Service was attached. October 17th was the fourth business day after the Court's October 10th ruling.

Although not germane to the disposition of the instant motion, the Court wishes to briefly address the issues raised in Plaintiff's motion.

Plaintiff has filed two separate civil actions with this Court. The first, Civil Action No. 2002-01-293, entitled *Delaware Broadcasting Co. Plaintiff Below, Appellant v. Maynard's, Defendant Below/Appellee*, is an *appeal de novo* from a Justice of the Peace Court decision. It was filed on January 24, 2002. The second, Civil Action No. 2002-04-125, is entitled *Delmarva Broadcasting Co., Plaintiff, v. Maynard's Piano Bar Restaurant, LLC*, Defendant, was filed on April 9, 2002.

The Complaints in each action are virtually identical. They match one another almost word for word. One difference is that in Paragraph 2 of each Complaint, the captioned Defendant is named followed by, "also known as", then stating the Defendant named in the other Complaint. The Complaints contain the same number of paragraphs, refer to the same contract and terms, the same payment amount made by Defendant, the same breach and pray for the same damages.

The Motion for Reargument argues that no finding of fact was made that the two Defendants are the same entity. The Court need make no such finding of fact on the record because Plaintiff, in it's pleadings, has made it clear that they are the same entity, but for the alias, or "also known as". It is clear to the Court that Plaintiff filed it's second complaint (C.A. No. 2002-04-125) simply to avoid the consequences of problems involving the action on appeal from the lower Court (C.A. No. 2002-01-293). Plaintiff clearly chose it's forum and cause of action when it filed the original action in the Justice of the Peace Court and subsequently appealed that decision to this Court. Plaintiff is not entitled to "two bites of the apple".

Having discussed the gist of Plaintiff's Motion, it should be pointed out that it is unnecessary to rule on the merits of the motion due to procedural deficiencies.

Rule 59(e) of the Court of Common Pleas Civil Rules provides that:

“A motion for reargument shall be *served* and filed within 5 days after the filing of the Court’s opinion or decision.” (emphasis added)

Although the Motion was timely filed (Court of Common Pleas Rule 6(a)), as noted earlier the motion was not accompanied by a Certificate of Service. In fact, on November 4, 2003, counsel for Defendant filed with the Court a copy of a letter to Plaintiff’s counsel stating that he had not received the Motion. Defendant’s counsel stated that he only became aware of the motion when he received a copy of a letter to the Court from Plaintiff’s counsel stating that Defendant’s time period to reply to the motion had expired.

It is clear that Plaintiff did not “serve and file” the Motion for Reargument as required under Rule 59(e). Therefore, Plaintiff’s Motion for Reargument is DENIED.

SO ORDERED, this 13th day of August, 2004.