

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

GLEN FALLS INSURANCE CO.)
as subrogee of William D. Scheper,)
& WILLIAM D. SCHEPER,)
individually,)
)
Plaintiff,)
)
v.)
)
KYLE K. OCTAVIO, d/b/a)
OCTAVIO'S CONCRETE, and)
MATERIAL SUPPLY, INC.,)
a Delaware Corporation,)
)
Defendants.)

C.A. No. 2002-07-669

ARBITRATION CASE

Submitted: June 4, 2004

Decided: June 14, 2004

ORDER OF PLAINTIFF'S
MOTION FOR REARGUMENT

Plaintiff moves pursuant to Court of Common Pleas Civil Rule 59(e) for reargument of a decision entered by this Court on May 6, 2004 following trial. The motion was docketed May 13, 2004, therefore, under Court of Common Pleas Civil Rule 6, it is timely. Plaintiff raises two issues in its motion. First, plaintiff argues that the monetary calculation of the Court is less than the amount stipulated by the parties prior to trial. This issue is not contested by either of the defendants. Therefore, the judgment amount entered in these proceedings is hereby modified,

as stated herein. The Court entered judgment against Octavio's on the basis of 25 percent liability; therefore, a judgment against Octavio's is hereby amended and entered in the amount of \$7,040.75. The Court entered judgment against Material Supply on the basis of 75 percent liability; therefore, the judgment is hereby amended and entered in the sum of \$21,122.25.

The second issue raised by plaintiff moves the Court to reconsider its holding that the judgment is not jointly and severally against the party defendants. Octavio's response to this argument supports plaintiff's position that judgment should be entered jointly and severally. Material Supply's response does not oppose the issue of joint and several liability, but merely states that this issue was raised at trial and plaintiff should not be permitted to reargue the issue in a motion for reargument. However, a motion for reargument is the proper tool for a party to move the Court to reconsider its finding of fact, conclusions of law, and basis for judgment. Hessler, Inc. v. Farell, Del. Supr., 260 A.2d 701 (1969). Therefore, plaintiff's Rule 59(e) motion appropriately puts the issues before the Court.

Plaintiff's claim in these proceedings, maintains that its property was damaged as a result of the actions of Octavio's Concrete and Material Supply. It was his contention at trial, which the testimony supported, that the actions of both defendants contributed to the damage sustained by his property. This argument has merit in that multiple defendants may be liable as joint tortfeasors if each defendant's negligence is found to be a proximate cause of the plaintiff's injuries. Sears and Roebuck v. Huang, Del. Supr. 652 A.2d 568 (1995).

The pertinent facts in this case indicate that the damage sustained by plaintiff's property for which the parties were held liable was the proximate cause of the negligence attributable to each defendant. While the degree of negligence differs in the Court's opinion, it is still clear that they both share liability for the damage. Because they both share in liability for the damage, judgment should be entered for joint and several liability.

Accordingly, plaintiff's motion is hereby Granted amending the Order of judgment entering it as joint and several liability, in the amount as stated above.

SO ORDERED this 14th day of June, 2004

Alex J. Smalls
Chief Judge