

September 17, 2002

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**RE: *Augustine A. Dibiase, Jr., Individually and derivatively
on behalf of Main Street Galleria, L.L.C. vs. Thomas N.
Vendemia, and Albert G. Decesaris***
Civil Action Number 2002-06-178

Letter Opinion - Motion for Reargument

Dear Counsel:

Defendants Thomas N. Vendemia, and Albert G. Decesaris (collectively, "Defendants") have filed a Motion for Reargument ("the motion") pursuant to Court of Common Pleas Civil Rule 59(e) of their motion to dismiss, which was denied by the Court's bench ruling on August 9, 2002. Plaintiff Augustine A. Dibiase., individually and derivatively on behalf of Main Street Galleria, L.L.C. (hereinafter "Plaintiff") has filed a reply in opposition to Defendants' Motion for Reargument. This is the Court's letter decision on defendants' Motion.

Defendants' Motion argues, *inter alia*, that the Court erred as a matter of law when it decided to retain subject matter jurisdiction over Plaintiff's claims. Second, defendants assert that pursuant to 10 *Del. C.* §1322(a), that the Court's jurisdiction is limited to civil actions "at law" and therefore does not extend to Plaintiff's breach of fiduciary duty of loyalty claims, which are cognizable only in equity.

Plaintiff's reply filed in opposition to Defendants' Motion argues *inter alia*, that the Court properly rejected Defendants' motion to dismiss for lack of subject matter jurisdiction. Plaintiff further argues that the Court's ruling was supported by the fact that plaintiff is not seeking any equitable relief, but

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instead is pursuing a money damage claim that is within the jurisdictional limits of the Court of Common Pleas. 10 *Del. C.* §1322.

Plaintiff's second argument in their reply is that the Defendants raised exactly the same arguments that were considered and rejected in connection with Defendant's prior motion to dismiss, and thus, Defendants' Motion should be denied pursuant to a Letter Opinion of the Superior Court of Delaware in *Albu Trading, Inc. v. Allen Family Food, Inc.*, 2001 WL 1403023 (Del. Super. September 24, 2001).

Plaintiff's finally asserts that even if there was a proper basis for Defendants' re-argument of their motion to dismiss, Defendants' Motion should be denied on the merits. In support of her assertion, Plaintiff argues that provided that her suit involves a breach of fiduciary duty claim, her claim does not satisfy the jurisdictional requirements of the Chancery Court. Furthermore, Plaintiff argues that since her action is not a "fairness suit", Defendants' reliance on *Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487 (Del. 1981) is misplaced. Lastly, Plaintiff argued that Defendants' other authority for their position, *Lorch v. Dyson-Kissner-Moran Corp.*, 1993 WL 271433 (Del. Ch. 1993), is misleading and taken out of context.

After a careful consideration of arguments and legal authorities cited from both parties on Defendants' Motion, the Court finds that Defendants' Motion should be granted for the following reasons:

1. The Court of Common Pleas is a court of statutory jurisdiction pursuant to 10 *Del. C.* §1322(a), and thus, does not have the subject matter jurisdiction over breach of fiduciary duty claims.
2. Breach of fiduciary duty claims invoke the exclusive jurisdiction of the Chancery Court when equity is the only remedy available, but may trigger the Chancery Court's exercise of its discretionary concurrent jurisdiction where part of the claims is cognizable at law and part of them is in equity. *Lorch v. Dyson-Kissner-Moran Corp.*, 1993 WL 271433 (Del. Ch. 1993); *Harman v. Masoneilan Int'l, Inc.*, 442 A.2d 487 (Del. 1981).
3. It is within the Chancery Court's jurisdiction and discretion to determine whether Plaintiff's civil action alleging a breach of fiduciary duty of loyalty come under its concurrent jurisdiction by weighing various relevant factors in equity pursuant to *Lorch v. Dyson-Kissner-Moran Corp.*.

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4. A Motion for Reargument is the proper device seeking reconsideration of a final court's finding of fact, conclusion of law, or judgment. *Hessler, Inc. v. Farrell*, Del. Supr., 260 A.2d 701 (1969). The Court finds that upon the authorities cited by defendants, it shall be granted.

For the foregoing reasons, the Court hereby GRANTS Defendants' Motion for Reargument pursuant to Court of Common Pleas Civil Rule 59(e), and REMOVES *sua sponte* the underlying civil action to the Chancery Court subject to the provisions of 10 *Del. C.* §1902. Each party shall bear their own costs.

IT IS SO ORDERED this 17th day of September, 2002.

Very truly yours,

cc: Ms. Barbara Dooley
CCP - Civil Clerk