

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

| | | |
|-----------------------------|---|--------------------------|
| CACH, LLC, |) | |
| |) | |
| Appellant, Plaintiff-Below, |) | |
| |) | |
| v. |) | C.A. No. N10A-08-015 WCC |
| |) | |
| EASTERN SAVINGS BANK, FSB |) | |
| |) | |
| Appellee, Defendant-Below. |) | |

Submitted: October 24, 2011
Decided: January 31, 2012

Upon Defendant's Motion for Reargument. DENIED

ORDER

David E. Matlusky, Esquire, and Brett Bendistis, Esquire. The Matlusky Firm, LLC, 1423 North Harrison Street, Wilmington, DE 19806. Counsel for Plaintiff.

Patrick Scanlon, Esquire. Law Offices of Patrick Scanlon, P.A., 203 NE Front Street, Suite 101, Milford, DE 19963. Counsel for Defendant.

CARPENTER, J.

Upon considering Defendant Eastern Savings Bank’s Motion for Reargument, Plaintiff CACH, LLC’s response, and the record of this case, it appears to the Court that:

1. Defendant has moved for reargument of this Court’s findings of fact and conclusions of law as set forth in an Opinion dated September 30, 2011.¹ In that Opinion, the Court reversed the Court of Common Pleas’ decision to grant summary judgment in favor of Defendant.² The issue before both courts was whether the holder of a judgment lien—here, Plaintiff—is entitled to have its judgment satisfied out of the proceeds of a foreclosure sale on the affected property where the judgment lien predates the foreclosing mortgage.³ On review, this Court determined that the lower court misinterpreted the admittedly esoteric statutes and case law relevant to the instant case.⁴ This Court held that Delaware law requires the discharge of all non-mortgage liens on land sold at foreclosure sale when those liens have priority relative to the foreclosing party.⁵ Defendant now moves for reargument on the grounds that the Court ignored binding case law, did not strictly construe applicable law, and overlooked relevant facts.

¹ *CACH, LLC v. Eastern Savings Bank, FSB*, 2011 WL 4730525 (Del. Super. Sept. 30, 2011).

² *Id.*

³ Defendant is the foreclosing party.

⁴ *CACH, LLC*, 2011 WL 4730525, at *1.

⁵ *Id.*

2. A motion for reargument will usually be denied unless the Court has “overlooked a controlling precedent or legal principles, or the court has misapprehended the law or facts such as would have changed the outcome of the underlying decision.”⁶ A motion for reargument should not be used merely to rehash the arguments already decided by the Court, nor will the Court consider new arguments that the movant could have previously raised.⁷ The movant “has the burden of demonstrating newly discovered evidence, a change in the law, or manifest injustice.”⁸
3. Defendant has not met this burden. Defendant first contends that the Court should have addressed *Reybold v. Herdman*.⁹ In fact, the Court considered *Reybold*, even if it did not cite the case in its Opinion, because Defendant referenced *Reybold* in its Answering Brief. *Reybold* is no more or less binding on the Court than *Farmers’ Bank v. Wallace*¹⁰ or *Sharpe v. Tatnall*,¹¹ and the Court noted in its Opinion that it was resolving antiquated, contradictory laws dissonant with today’s financial practices.¹²

If the Court’s resolutions are dissatisfactory to Defendant, the Court

⁶ *Defillipo v. Quarles*, 2010 WL 2636855, at *2 (Del. Super. June 30, 2010) (citing *Lamourine v. Mazda Motor of Am.*, 2007 WL 3379048, at *1 (Del. Super. Sept. 24, 2007)).

⁷ *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000).

⁸ *Id.* (citing *E.I. duPont de Nemours & Co. v. Admiral Ins. Co.*, 711 A.2d 45, 55 (Del. 1995)).

⁹ 2 Del.Ch. 34 (1837).

¹⁰ 3 Harr. 370 (Del. Super. 1841).

¹¹ 5 Del. Ch. 302 (1880).

¹² *CACH, LLC*, 2011 WL 4730525, at *5, n.20.

encourages Defendant to ask the Supreme Court of Delaware to clarify this issue.

4. Defendant also argues that the outcome of the case would have been different if the Court strictly construed case law and Judge Woolley's treatise. This may have been the case if there existed clearly written and factually relevant cases, statutes, and treatises for the Court to construe. As it was, obscure verbiage and fact patterns only tenuously related to this case's made strict construction impossible. The Court does not agree that it misapprehended the law, but, again, the Court would welcome the Supreme Court's guidance if Defendant chooses to appeal.
5. Next, Defendant alleges that the Court's decision is unenforceable because Plaintiff cannot bring a claim against Defendant to disburse the proceeds of the sheriff's sale. Even if this is true, it is a problem for Plaintiff and not Defendant. Plaintiff has not brought any such complaints before the Court.
6. The balance of Defendant's motion advances policy arguments against the Court's decision and alleges the Court misapprehended certain facts. Those facts, even if misunderstood by the Court, would not change the outcome of the case, and policy arguments will not support a motion for reargument.¹³

¹³ See *supra* notes 6-8 and accompanying text.

7. The Court concedes that it is difficult to divine the legislative intent of centuries-old statutes and to compare fact patterns for financial transactions in cases predating the automobile, much less digital title searches.

However, the Court is confident that it did not overlook controlling precedent or material facts in deciding this case. If by mistake it did, Defendant is welcome to argue these mistakes on appeal. For the foregoing reasons, Defendant's Motion for Reargument is DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.

Judge William C. Carpenter, Jr.