SUPERIOR COURT
OF THE
STATE OF DELAWARE

FRED S. SILVERMAN
JUDGE

NEW CASTLE COUNTY COURTHOUSE
500 North King Street, Suite 10400
Wilmington, DE 19801-3733
Telephone (302) 255-0669

January 17, 2013

(VIA E-FILED)

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RE: *Independence Mall, Inc. v. Michael J. Wahl and Wahl Family Dentistry*, C.A. No. 10C-12-031 FSS

Upon Plaintiff's Motion for Reargument and to Alter or Amend Judgment – ***DENIED***

Dear Counsel:

After oral argument and supplemental briefing on cross motions for partial summary judgment, the court issued its decision on December 31, 2012. Plaintiff has timely moved for reargument under Superior Court Civil Rules 59(d) and (e), and 60(a) and (b). Defendants responded January 15, 2013.

First, Plaintiff argues the court decided claims that were not presented.

Specifically, Plaintiff states that "the only issue" it moved on was "that Defendants Michael J. Wahl and Wahl Family Dentistry [] were holdover tenants." Second, Plaintiff "did all that it was required to do . . . to defeat Defendant's [*sic*] Motion for Partial Summary Judgment." Lastly, Plaintiff urges the court to alter its decision because "the Court already made a [] ruling from the bench at the hearing on the motions for summary judgment that [Wahl Family Dentistry] was not a month-to-month tenant."

A motion for reargument will be denied unless the court overlooked controlling principles or misapplied the law or facts in such a way that would change the outcome of the underlying decision.[1] A Rule 59(e) motion may not present new arguments nor rehash those already presented.[2] "The disposition of a Superior Court Civil Rule 59(d) motion to alter or amend the judgment, or a Rule 59(e) motion for reargument is within the sound discretion of the court."[3]

The court recognized: "Technically, [Plaintiff's] motion was for summary judgment on Count II, alleging breach of the 1997 lease." The court further recognized, however, that: "Tenant's motion prompted Landlord to raise the rest of the arguments addressed at oral argument and here." In its response and at oral argument, Plaintiff argued that Defendants adopted the 2007 lease. The court left the record open, allowing supplemental briefing regarding Plaintiff's partial performance "defense to Tenant's Statute of Frauds argument." Thus, Plaintiff cannot say that Defendants' adoption of the 2007 lease was not presented. In summary, Plaintiff's first claim here is neither new nor previously overlooked.

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[1] *Reid v. Hindt*, 2008 WL 2943373, *1 (Del. Super. July 31, 2008) (Vaugh, P.J.).

[2] *Id.*

[3] *Brown v. Weiler*, 719 A.2d 489 (Del. 1998) (TABLE).

That leads to Plaintiff's claim regarding the court's changing position. The court specifically noted that it would review the record to determine "as a matter of law" whether Defendants adopted the 2007 lease or were estopped from denying it. Upon reviewing the record and the parties' supplemental briefs, and as explained in its decision, the court determined, as a matter of law, the parties created a month-to-month tenancy.

Finally, Plaintiff's claim that "it did all that it was required to do" to overcome summary judgment is not a proper basis for a motion under Superior Court Civil Rule 59 or 60. Rule 60(a) concerns clerical mistakes. Plaintiff has not alleged any. And, Rule 60(b) "requires a showing of 'extraordinary circumstances.'"[4] Again, the Plaintiff has not alleged any. Moreover, Plaintiff fails to expose law or facts the court failed to consider that would ultimately alter its decision under Rule 59(e).

For those reasons, Plaintiff's Motion for Reargument/Clarification and to Alter or Amend Judgment is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

/s/ Fred S. Silverman

FSS:mes
oc: Prothonotary (Civil)

[4] *Dixon v. Delaware Olds, Inc.*, 405 A.2d 117, 119 (Del. 1979).