

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

ABIGAIL M. LEGROW
JUDGE

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December 20, 2018

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RE: Lawrence E. Mergenthaler v. Triumph Mortgage Corp.
C.A. No. 09C-09-203 AML

Dear Counsel,

In what unfortunately has become the norm in this case, the parties have filed a host of overlapping and redundant motions and responses to motions. Presently before the Court are (1) Defendant's Motion for Reargument and Stay of Order (the "Motion for Reargument"); (2) Defendant's Motion to Stay pending appeal (the "Motion to Stay");¹ and (3) Plaintiff's Motion to Strike Defendant's Motion to Stay (the "Motion to Strike").

¹ The Motion for Reargument seeks temporarily to stay the Court's December 4, 2018 Order until the Motion for Reargument is decided. The Motion to Stay seeks to stay the Court's December 4, 2018 Order pending appeal. Why Defendant filed two separate stay motions is not clear but also is not important.

For the sake of brevity and efficiency, I will not repeat here the complicated facts of this case. The uninitiated reader is referred to my November 26, 2018 Opinion for a complete description of the parties' lengthy history. The following facts are relevant for purposes of the pending motions. Plaintiff is a judgment creditor with an unpaid judgment against Defendant. In an attempt to collect that judgment, Plaintiff filed a writ of attachment *feri facias* (the "Challenged Writ"). Defendant disputed the validity of the Challenged Writ, and the parties engaged in protracted motion practice relating to the writ's validity. While that motion practice was ongoing, the parties agreed that the funds in dispute would be deposited with the Prothonotary until further order of this Court.

On November 26, 2018, the Court issued its opinion (the "Opinion") resolving three motions relating to the Challenged Writ and the parties' entitlement to the funds on deposit with the Prothonotary. Plaintiff, as directed in the Opinion, filed a proposed implementing order for the Court's signature. Among other things, Plaintiff's proposed form of implementing order directed the Prothonotary to pay over to Plaintiff all funds deposited with the Prothonotary under this Court's April 6, 2017 Order.² On December 4, 2018, the Court entered Plaintiff's proposed form of order (the "Order") over Defendant's objection. Defendant now seeks to reargue the Order and to stay its effectiveness, and Plaintiff seeks to strike the Motion to Stay. This letter decision resolves all three pending motions, but

² D.I. 191.

does not address Plaintiff's pending motion to compel discovery in aid of execution, which will be heard at a later date.

The Motion for Reargument

In the Motion for Reargument, Defendant contends the Order was improper because it granted relief beyond what was decided in the Opinion and, in so doing, contravened Defendant's due process rights. Defendant argues that "it is clear beyond *peradventure*" that the Order should have been limited to setting forth the Court's decision on the motions resolved in the Opinion.³ Consequently, Defendant argues, the Order's inclusion of language directing the Prothonotary to pay the disputed funds to Plaintiff afforded relief that was not sought in the motions. Defendant argues that granting Plaintiff that relief without Plaintiff filing a motion requesting the remedy violated the Court's rules and Defendant's due process rights.

Defendant's motion does not meet the standard for reargument. A motion for reargument will be granted if the Court has "overlooked a controlling precedent or legal principles, or [] misapprehended the law or facts such as would have changed the outcome of the underlying decision."⁴ A movant neither may present new arguments nor rehash those already presented.⁵ The movant "has the burden

³ See D.I. 194 ¶ 4.

⁴ *Radius Servs., LLC v. Jack Corrozi Const., Inc.*, 2010 WL 703051, at *1 (Del. Super. Feb. 26, 2010).

⁵ *Reid v. Hindt*, 2008 WL 2943373, at *1 (Del. Super. July 31, 2008).

of demonstrating newly discovered evidence, a change in the law or manifest injustice.”⁶

Defendant’s Motion for Reargument does not cite any legal principles or facts the Court overlooked or misapprehended. The Order is consistent with the Court’s Opinion because it grants the relief that inevitably flows from the Opinion. In the Opinion, the Court concluded the Challenged Writ was valid, denied Defendant’s motion to quash the Challenged Writ, and denied Defendant’s motion for withdrawal of the funds on deposit with the Prothonotary. All the parties, even Defendant, agreed that the Court’s resolution of the challenges to the writ would resolve who was entitled to the disputed funds.⁷ The last thing this case needed was another motion rehashing the arguments previously raised by the parties regarding who was entitled to the disputed funds.

It follows that Defendant was not denied due process by the Court’s entry of the Order. In addition to having ample opportunity to raise and argue substantive challenges to Plaintiff’s entitlement to the disputed funds, Defendant also filed a letter challenging Plaintiff’s proposed order and submitted a competing proposed order. The Court considered and addressed Defendant’s arguments in a letter dated

⁶ *Id.* (quoting *State v. Brooks*, 2008 WL 435085, at *2 (Del. Super. Feb. 12, 2008)).

⁷ D.I. 148, Response ¶ 15 (“Pursuant to the request of [Plaintiff], and over the objection of [Defendant], the funds held by Merrill Lynch were deposited into this Court. The Court ruled that whoever prevailed on the question of the validity of the Writ of Attachment *Fi.Fa.* would receive the funds.”).

December 4, 2018.⁸ Defendant's Motion for Reargument simply rehashes the reasons Defendant previously articulated for opposing Plaintiff's proposed form of order. For all the foregoing reasons, the Motion for Reargument is **DENIED**. The request to stay the effectiveness of the Order pending resolution of the Motion for Reargument is mooted by the Court's ruling below on the broader Motion to Stay.

The Motion to Strike

Plaintiff argues Defendant's Motion to Stay the Order pending an appeal to the Delaware Supreme Court should be stricken under Superior Court Civil Rule 12(f) because the motion is redundant. Plaintiff contends that the request to stay the Order pending appeal "should have been presented in the earlier motion seeking a stay." Plaintiff seems to be arguing that the request in the Motion for Reargument to stay the Order temporarily did not contain argument regarding the factors the Court considers in granting or denying a motion to stay, and Defendant should not get a second bite at the apple by filing a second motion.

There is no shortage of redundant and overlapping motions on the docket in this case, but striking the Motion to Stay is not warranted. Although it would have been more efficient for Defendant to combine its requests to stay in a single motion, there is no substantial prejudice to Plaintiff in the presentment of two separate motions directed to two slightly different stay requests. Accordingly, the Motion to Strike is **DENIED**.

⁸ D.I. 190.

The Motion to Stay

Stripped of its rhetoric and undertones of disrespect directed toward both the Court and opposing counsel,⁹ Defendant's Motion to Stay seeks to stay the Order pending appeal because (i) the Opinion decided an issue of first impression, (ii) denying the stay would make it difficult, if not impossible, for Defendant to recoup the disputed funds if he ultimately prevails on appeal, and (iii) Plaintiff would not be harmed by a stay. In considering a motion to stay pending an appeal to the Delaware Supreme Court, this Court must assess (1) the likelihood of success on the merits of the appeal, (2) whether the movant will suffer irreparable injury if the stay is not granted, (3) whether any other interested party will suffer substantial harm if the stay is granted, and (4) whether the public interest will be harmed if the stay is granted.¹⁰ The "likelihood of success on the merits" factor cannot be read literally by the trial court, since to do so would require the trial court first to confess error in its ruling.¹¹ Rather, the trial court should balance all the equities in the case and grant the stay if the other three factors strongly favor interim relief and the movant has presented "a serious legal question that raises a 'fair ground for litigation and thus more deliberative investigation.'"¹²

⁹ See, e.g. D.I. 198 ¶ 7; D.I. 194 ¶ 1 n.1, ¶ 9.

¹⁰ *Kirpat, Inc. v. Del. Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357 (Del. 1998).

¹¹ *Id.* at 357-58.

¹² *Id.* at 358.

The second, third, and fourth factors neither favor nor disfavor interim relief in this case. It cannot be said that the theoretical difficulty in recouping the funds would constitute an irreparable harm to Defendant.¹³ Here, in particular, Defendant continues to owe Plaintiff a debt in excess of the amount held by the Prothonotary, so any later debt Plaintiff might owe Defendant if Defendant prevails on appeal would serve partially to offset Defendant's debt to Plaintiff. On the other hand, it is not clear how Plaintiff will suffer any substantial harm if the disputed funds remain on deposit while an appeal is pending, and there does not appear to be any public interest that would be harmed by a stay.

As to the first *Kirpat* factor, although I believe the Opinion and Order correctly were decided, an appeal nevertheless would present serious issues for litigation. The Court has decided numerous motions in this case based on the interplay between arcane common law and an ambiguous statute that conflicts with a Court rule and long-standing Court practice. Some of the issues decided by the Court presented issues of first impression in Delaware. Accordingly, with the

¹³ See, e.g. *In re K-Sea Transp. Partners L.P.*, 2011 WL 2410395 (Del. Ch. Jun. 10, 2011) (holding that although irreparable harm for purposes of seeking a preliminary injunction may be shown if a party demonstrates he will be unable to collect on a judgment or if there is a substantial likelihood that he will not be able to do so, the party making that argument must allege facts sufficient to support a reasonable inference that the judgment could not be collected); *Sagarra Inversiones, S.L. v. Cementos Portland Valderrivas S.A.*, 2011 WL 3273266, at *2 (Del. Ch. July 7, 2011) (holding that for purposes of a motion for a preliminary injunction, "irreparable harm is that 'for which there can be no adequate recompense at law, i.e. , an award of compensatory damages will not suffice.'").

other factors in equipoise, I find that the first factor weighs in favor of granting the Motion to Stay.

Under Superior Court Civil Rule 62 and Supreme Court Rule 32, I also must determine what security would be sufficient to support the stay. In my view, the funds already on deposit represent complete security as they constitute the entirety of the monies to which either side will be entitled under the Challenged Writ. Accordingly, Defendant need not post any additional security, and the Order is **STAYED** until (i) the appeal period expires without any appeal being filed, or (ii) Defendant's appeal from the Order is resolved by the Delaware Supreme Court.

IT IS SO ORDERED.



Abigail M. LeGrow, Judge

Original to Prothonotary