

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

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|---------------------------------|---|--------------------------|
| THE RYLAND GROUP, INC., | : | |
| | : | |
| | : | |
| Plaintiff, | : | |
| | : | C.A. No.: 00C-09-056 SCD |
| v. | : | |
| | : | |
| SANTOS CARPENTRY COMPANY, INC., | : | |
| et al., | : | |
| | : | |
| Defendants. | : | |

ORDER

This 15th day of October, 2004, Defendants Santos Carpentry Co., Inc., Rabspan, Inc., and MK Builders (collectively “Defendants”) having made application pursuant to Rule 42 of the Supreme Court for an order certifying an appeal from the interlocutory order of this Court, dated August 31, 2004, granting Plaintiff The Ryland Group, Inc.’s (“Ryland”) Motion for Reargument based on the issue of contribution, and the Motion for Reargument of the Motion for Reargument dated September 9, 2004, and it appearing that:

1. Defendants raise two issues as support for certification of interlocutory appeal. The first is that the Court did not have a basis for the reversal of the grant of summary judgment for Defendants. The second is that the Court improperly denied the motion for reargument of the motion for reargument.

2. Certification of an interlocutory appeal is appropriate if the trial court (1) determines there is a substantial issue and (2) establishes a legal right and (3) meets one or more of the following criteria:

- (a) any of the criteria applicable to proceedings for certification of questions of law set forth in Delaware Supreme Court Rule 41; or

- (b) the interlocutory order has sustained the controverted jurisdiction of the trial court; or
- (c) an order of the trial court has reversed or set aside a prior decision of the court, a jury, or an administrative agency from which an appeal was taken to the trial court which has determined a substantial issue and established a legal right, and a review of the interlocutory order may terminate the litigation, substantially reduce further litigation, or otherwise serve considerations of justice; or
- (d) a review of the interlocutory order may terminate the litigation or may otherwise serve considerations of justice.¹

(3) Denial of summary judgment motions is rarely appropriate subject matter for an interlocutory appeal.² Under such circumstances, interlocutory appeal will be unlikely to “serve considerations of justice.” I find there is a genuine issue of material fact regarding whether Ryland paid more than its prorata share of the homeowners’ claims and, therefore, whether Ryland has a claim for contribution from the Defendants.

(4) The case Defendants cite that granted reargument of a motion for reargument is distinguishable from the present case. In *George & Lynch, Inc. v. Armco Steel Corp.*,³ the court allowed reargument of the motion for reargument because the opposing party had not filed a response to the first motion for reargument. The court chose to consider the motion for reargument of the motion for reargument as just such a response.⁴ The procedural posture is different in the present case. Defendants did oppose the first motion for reargument. There is no discord among the trial courts on this issue that the Supreme Court needs to resolve. Serial motions for reargument are not permitted.⁵

(5) Jurisdiction is not controverted. The decision of this Court has not vacated or opened a judgement of the trial court, nor is it clear that a review of the interlocutory order will

¹ Delaware Supreme Court Rule 42(b).

² *Levinson v. Conlon*, 385 A.2d 717, 720-21 (Del. 1978) (holding denial of a summary judgment motion does not constitute the establishment of a legal right for the purpose of appealing an interlocutory order). See also *Delaware Dept. of Transportation v. Baxter*, 2002 WL 31357916 at *2 (Del. Super.), *aff'd* 812 A.2d 224 (table) (Del. 2002).

³ 1987 WL 8888 (Del. Super.).

⁴ *Id.* at *1.

⁵ *Playtex v. Columbia*, 1991 WL 191619 (Del. Super.).

otherwise serve considerations of justice. There is no substantial issue raised or legal right established. The Court refuses to certify the interlocutory appeal.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

Original to Prothonotary
xc: Counsel of Record
Cathy L. Howard, Clerk of the Supreme Court