

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

TINA A. ATWELL and ASHLEY ATWELL,	:	
a minor by her next friend, TINA A. ATWELL,:	:	C.A. No. 02C-12-003WLW
	:	
Plaintiffs,	:	
	:	
v.	:	
	:	
RHIS, INC. d/b/a RELIABLE HOME	:	
INSPECTION SERVICE, a Delaware	:	
corporation, RICHARD DAVIS, and LITITZ	:	
MUTUAL INSURANCE COMPANY, a	:	
foreign corporation,	:	
	:	
Defendants.	:	

Submitted: August 31, 2006
Decided: September 11, 2006

ORDER

Upon Defendant Richard Davis' Motion for Reargument.
Denied.

William D. Fletcher, Jr., Esquire of Schmittinger & Rodriguez, P.A., Dover, Delaware and Mary F. Higgins, Esquire, Odessa, Delaware; co-counsel for Plaintiffs.

Robert K. Pearce, Esquire of Ferry Joseph & Pearce, P.A., Wilmington, Delaware; attorneys for Defendant Richard Davis.

Norman H. Brooks, Esquire of Marks O'Neill O'Brien & Courtney, P.C., Wilmington, Delaware; attorneys for Defendant RHIS.

Steven P. Casarino, Esquire of Casarino Christman & Shalk, P.A., Wilmington, Delaware; attorneys for Defendant Lititz Mutual Insurance Company.

WITHAM, R.J.

Defendant, Richard Davis (“Mr. Davis”) filed a Motion for Reargument of that portion of the Court’s August 18, 2006 Order (“the Order”) which denied Mr. Davis’ motion to dismiss Count III of the Complaint for lack of subject matter jurisdiction. First, Defendant argues Count III should be dismissed, because it alleges a claim for negligent misrepresentation, akin to Count IX (which was dismissed by Order of this Court). Second, Mr. Davis argues the Court lacks subject matter jurisdiction concerning Count III, because subject matter jurisdiction is not determined by whether a claim is well pled, and the substance of the allegation is a claim for negligent misrepresentation. In other words, Count III is a Trojan Horse for the jury. Plaintiffs, Tina and Ashley Atwell, argue Mr. Davis’ Motion for Reargument should be denied, because Mr. Davis is merely rehashing the arguments Defendant made in his original motion. Also, Mr. Davis has failed to identify any legal principle the Court overlooked, and failed to point to any misapprehended facts or law.

For the reasons set forth below, Defendant’s Motion for Reargument is *denied*.

Standard of Review

This Court has clearly established that “reargument will usually be denied unless it is shown that the Court ‘overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would affect the outcome of the decision.’”¹ Additionally, “the Delaware Supreme Court has also stated that motions for reargument should not be used merely to

¹*State v. Trump*, 2004 Del.Super. LEXIS 285, at *2.

‘rehash the arguments already decided by the court.’”²

DISCUSSION

Defendant, Mr. Davis, has failed to establish that the Court overlooked a precedent or legal principle that would have controlling effect, or that it has misapprehended the law or the facts such as would effect the outcome of the decision. Mr. Davis has essentially rehashed the arguments already decided by Court Order. Mr. Davis previously argued Count III was a claim for negligent misrepresentation meeting the appropriate elements,³ but the Court determined Count III alleged negligence, not negligent misrepresentation. The Court reasoned Count III did not resemble Count IX’s express negligent misrepresentation allegation, and Count III “put the defendant on notice of what duty was breached, who breached it, the breaching act, and the party upon whom the act was performed.”⁴ Specifically, Count III establishes the duty (that a seller must disclose known defects), who breached the duty (Defendant Davis), the breaching act (failing to disclose the condition of the home), and the injured party (Plaintiffs). In deciding Count III alleges negligence, the Court implicitly determined Count III was not akin to Count IX, as Mr. Davis argues.

²*Id.*

³(1) a pecuniary duty to provide accurate information, (2) the supplying of false information, (3) failure to exercise reasonable care in obtaining or communicating information, and (4) a pecuniary loss caused by justifiable reliance upon the false information *See Outdoor Technologies, Inc. v. Allfirst Fin., Inc.*, 2001 WL 541472 (Del. Super.).

⁴*Anderson v. Airco, Inc.*, 2004 WL 1551484 (Del. Super.).

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Mr. Davis also argues the Court lacks subject matter jurisdiction concerning Count III, because subject matter jurisdiction is not determined by whether a claim is well pled, and the substance of the allegation is a claim for negligent misrepresentation. The Defendant previously argued that the substance of Count III was a claim for negligent misrepresentation, but the Court determined the substance of Count III was alleging negligence (for reasons discussed above). Therefore, the Court has subject matter jurisdiction over Count III.

Based on the foregoing, Defendant's Motion for Reargument is *denied*. IT IS SO ORDERED.

/s/ William L. Witham, Jr.
R.J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution