

IN THE SUPREME COURT OF THE STATE OF DELAWARE

| | |
|---------------------|---------------------------------|
| DAVID CHRIN, | § |
| | § No. 427, 2012 |
| Plaintiff Below- | § |
| Appellant, | § |
| | § Court Below-Court of Chancery |
| v. | § of the State of Delaware |
| | § C.A. No. 20587 |
| IBRIX INCORPORATED, | § |
| | § |
| Defendant Below- | § |
| Appellee. | § |

Submitted: November 16, 2012

Decided: December 31, 2012

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices

ORDER

This 31st day of December 2012, upon consideration of the briefs of the parties and the record below, it appears to the Court that:

(1) The plaintiff-appellant, David Chrin (“Chrin”), filed an appeal from the Court of Chancery’s July 3, 2012 order denying his motion for reargument pursuant to Court of Chancery Rule 59(f), its June 14, 2012 order granting summary judgment in favor of the defendant-appellee, Ibrix Incorporated (“Ibrix”), pursuant to Court of Chancery Rule 56(c) and its October 19, 2005 order granting partial dismissal of his complaint pursuant to Court of Chancery Rule 12(b) (6). We find no merit to the appeal. Accordingly, we affirm.

(2) The record before us reflects that, while working at a Princeton, New Jersey consulting firm in the fall of 1999, Chrin and a colleague approached Steven Orszag, a Princeton University mathematics professor, about forming a company to develop and market software for computer storage devices. Their discussions culminated in the formation of Ibrix, which was incorporated in Delaware on October 3, 2000. At that time, Chrin, along with several others, executed “Founders Stock Purchase Agreements” (“SPAs”), which granted them equity interests in Ibrix. In 2001, Chrin was employed as a product manager at Ibrix. On or about May 3, 2002, he was terminated from his employment. He was offered a severance package, which he refused.

(3) This action was first filed in the Court of Chancery in October 2003. In June 2005, Chrin filed a Second Amended Complaint. In that complaint, Chrin alleged that Section 6 of the SPA created an implied three-year employment contract between him and Ibrix, which Ibrix breached when it terminated him prior to the expiration of the three-year term. On October 19, 2005, the Court of Chancery dismissed all claims in the Second Amended Complaint except for one---the claim that Chrin was not terminated “for cause” and, therefore, Ibrix was not entitled to exercise its right to repurchase certain shares of Ibrix held by Chrin.

(4) In April 2012, following the filing of a Third and Fourth Amended Complaint by Chrin, the parties filed cross-motions for summary judgment. In its brief in support of its summary judgment motion, Ibrix argued that Chrin's claim that Ibrix was not entitled to exercise its right to repurchase the Ibrix shares was moot, since the shares had been cancelled in a merger and no longer existed. Moreover, Ibrix argued, Chrin could not prosecute the claim in any case because he had not identified an expert to testify regarding the value of the shares as of the date of the merger.

(5) On June 14, 2012, the Court of Chancery granted Ibrix's motion for summary judgment and entered judgment in Ibrix's favor. Chrin filed a timely motion for reargument. In the motion, Chrin sought, among other things, to amend the Court of Chancery's final order to require Ibrix to pay an amount previously offered to Chrin to repurchase his shares, plus interest. On July 3, 2012, the Court of Chancery denied Chrin's motion for reargument. This appeal followed.

(6) In his appeal, Chrin claims that the Court of Chancery erred when it a) dismissed certain claims in his Second Amended Complaint; b)

granted Ibrix's motion for summary judgment; and c) denied his request to amend the final order, as requested in his motion for reargument.¹

(7) A motion to dismiss pursuant to Rule 12(b) (6) will be granted if it appears with reasonable certainty that the plaintiff could not prevail on any set of circumstances that can be inferred from the factual allegations contained in the complaint.² This Court reviews the Court of Chancery's grant of a motion to dismiss *de novo*.³ On a Rule 56 motion for summary judgment, the moving party must demonstrate that there are no genuine issues of material fact and that, viewing the facts in the light most favorable to the non-moving party, the movant is entitled to judgment as a matter of law.⁴ This Court reviews the Court of Chancery's grant of a motion for summary judgment *de novo*.⁵ The proper purpose of a Rule 59(f) motion for reargument is to request the trial court to reconsider whether it overlooked an applicable legal precedent or misapprehended the law or the facts in such a way as to affect the outcome of the case, not to raise new issues.⁶ This

¹ Chrin has waived his right to appeal the Court of Chancery's other rulings in its order denying his motion for reargument by failing to raise any such claims in this appeal. *Emerald Partners v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999).

² *Central Mortg. Co. v. Morgan Stanley Mortg. Capital Holdings LLC*, 27 A.3d 531, 535 (Del. 2011).

³ *Id.*

⁴ *Burkhart v. Davies*, 602 A.2d 56, 58-59 (Del. 1991).

⁵ *ConAgra Foods, Inc. v. Lexington Ins. Co.*, 21 A.3d 62, 68 (Del. 2011).

⁶ *Trump v. State*, 2005 WL 583749 (Del. Mar. 9, 2005) (citing *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969)).

Court reviews the Court of Chancery's denial of a motion for reargument for an abuse of discretion.⁷

(8) We have carefully reviewed the parties' briefs, the record below and the Court of Chancery's orders in light of the applicable standards of review. We find no error or abuse of discretion on the part of the Court of Chancery in any respect. Therefore, we conclude that the judgment of the Court of Chancery must be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Court of Chancery is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice

⁷ *Parker v. State*, 2001 WL 213389 (Del. Feb. 26, 2001).