SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

April 21, 2016

Patrick Scanlon, Esquire
The Law Offices of Patrick Scanlon, P.A.
203 NE Front Street, Suite 101
Milford, Delaware 19963

Herbert W. Mondros, Esquire
Margolis Edelstein
300 Delaware Avenue, Suite 800
Wilmington, Delaware 19801

RE: ***Irene Dickerson v. Julianne E. Murray, Esq., et al.***
Civil Action No.: S14C-07-026 RFS

Submitted: April 7, 2016
Decided: April 21, 2016

Plaintiff's Motion for Reargument.
Denied.

Dear Counsel:

Pending before the Court is the Motion for Reargument filed by Plaintiff pursuant to Rule 59(e) of the Superior Court Rules of Civil Procedure.

On May 28, 2013, Defendants represented Plaintiff in a family transaction. Plaintiff mortgaged her own property to a bank. The purpose was to provide her grandson, Matthew Chasanov, the funds from the loan for him to purchase another property. He was to pay her money equivalent to the mortgage payments. Defendants prepared a promissory note (the "note") to enable Plaintiff to formalize this agreement. The note, drafted by Defendants, did not include many standard provisions, namely, clauses for acceleration, amortization, interest, attorneys' fees in the event of a default, or the signatures of her grandson and his wife, Lindsay

(collectively the "Chasanovs"). The note was only between Plaintiff and Matthew Chasanov. No mortgage was prepared.

Nevertheless, Plaintiff agreed to proceed with the understanding that the Chasanovs would make the note payments. After closing, the Chasanovs were able to purchase their home together. Subsequently, the Chasanovs defaulted after making one payment on the note. Consequently, Plaintiff filed the present suit seeking $145,200.00 in damages, essentially representing her liability to the bank.

On December 1, 2015, Defendants filed a motion for summary judgment. In its March 24, 2016 Memorandum Opinion, Defendants' Motion for Summary Judgment was partially granted on the punitive damages claim.[1]

On March 30, 2016, Plaintiff moved to reargue pursuant to Rule 59(e). Defendants filed a response, and the matter is ripe for decision.

Plaintiff contends that *Lillquist v. Rodriguez*[2] "is directly on point" and the "Court failed to distinguish or even mention this significant precedent."[3] Defendants contend the motion should be denied because the subject matter was addressed, and "Plaintiff points to no authority requiring that this Court distinguish or even mention every case proffered by every party, on every motion, in every case."[4]

A motion for reargument "will be denied unless the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision."[5] "A party seeking to have the Court reconsider the earlier ruling must demonstrate newly discovered evidence, a change in the law, or manifest injustice."[6] "A motion for reargument is not intended to rehash the arguments already decided by the court."[7]

Plaintiff argues that under *Lillquist*, "the existence of a conflict of interest makes the question of punitive damages a jury question."[8] In *Lillquist*, the plaintiffs were passengers in a

[1] *Dickerson v. Murray*, C.A. No. S14C-07-026, at *11 (Del. Super. Mar. 24, 2016).
[2] 1995 WL 790993, at *1 (Del. Super. Nov. 30, 1995).
[3] Pl.'s Mot. for Reargument, at *1.
[4] Defs.' Mot. in Opp. of Pl.'s Mot. for Reargument, at *4 (internal quotation marks omitted).
[5] *Pettit v. Country Life Homes, Inc.*, 2005 WL 3194392, at *2 (Del. Super. Nov. 29, 2005) (quoting *Board of Managers of the Delaware Criminal Justice Information System v. Gannet Co.*, 2003 WL 1579170, at *1 (Del. Super. Jan. 17, 2003)).
[6] *Brenner v. Village Green, Inc.*, 2000 WL 972649, at *1 (Del. Super. May 23, 2000).
[7] *McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468, at *1 (Del. Nov. 24, 1992).
[8] Pl.'s Mot. for Reargument, at *1.

vehicle that was involved in an accident, and they hired the defendant to file a personal injury action on their behalf.[9] Although both drivers could have been named in the suit, the defendant named only the driver of the other vehicle as a possible tortfeasor.[10] Nearly seven years after the accident occurred, the case went to trial, and the plaintiffs received no damages.[11]

Just before the statute of limitations was to expire, the plaintiffs filed a gross negligence action against the defendant for failing to name both drivers as defendants.[12] The defendant filed a motion for summary judgment and argued that his decision to name only one defendant was reasonable because under the Delaware Automobile Guest Statute, recovery from the unnamed defendant was barred.[13] In response, the plaintiffs argued, *inter alia*, that punitive damages were appropriate because the defendant's failure to name the other driver was motivated by a conflict of interest.[14]

When analyzing the issues, the court rejected the defendant's contention that punitive damages are not recoverable in an action for attorney malpractice.[15] The court explained, "In fact, the issue of punitive damages is for the trier of fact, unless the evidence permits no reasonable inference that defendant's conduct was sufficiently reprehensible."[16] However, "ordinary negligence is not enough to support punitive damages, a showing of reckless disregard for the interest of a client may be sufficient."[17] Since the plaintiffs' claim for punitive damages was based on a conflict of interest, the court concluded that if a conflict did exist, that conflict could have led the defendant to recklessly disregard the plaintiffs' interests.[18] As a result, the court was unwilling to grant summary judgment without granting the plaintiffs time to develop the record.[19]

Plaintiff's contention that all allegations of a conflict of interest must automatically be submitted to the jury for punitive damages misinterprets *Lillquist* and Delaware precedent.[20] As

[9] *Lillquist*, 1995 WL 790993, at *1.
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Lillquist*, 1995 WL 790993, at *2.
[15] *Id.* at *3.
[16] *Id.*
[17] *Id.*
[18] *Id.*
[19] *See id.* ("For the most part, the record on punitive damages consists of innuendo and supposition.").
[20] *See Estate of Rae v. Murphy*, 956 A.2d 1266, 1270 (Del. 2008) ("Where the evidence only supports a negligence claim, summary judgment is appropriate."); *Jardel Co., Inc. v. Hughes*, 523 A.2d 518, 527 (Del. 1987) ("However,

stated in *Lillquist*, "the issue of punitive damages is for the trier of fact, *unless the evidence permits no reasonable inference that defendant's conduct was sufficiently reprehensible*."[21] The *Lillquist* court did not deny the defendant's motion for summary judgment simply because the plaintiffs alleged a conflict of interest. The *Lillquist* court denied summary judgment to provide the plaintiffs with an opportunity to develop the record with respect to their claim for punitive damages.

Unlike the record in *Lillquist*, the record in the present case was fully developed when this Court considered Plaintiff's claim for punitive damages. As Defendants point out, this Court has already determined that Defendants' conduct was not *sufficiently reprehensible* to justify an award of punitive damages.[22] Controlling precedent was not overlooked. The law or facts were not misapprehended such as would have changed the outcome of the underlying decision. Plaintiff has not demonstrated any new evidence.

Considering the foregoing, Plaintiff's Motion for Reargument is **DENIED.**

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

cc: Prothonotary's Office

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where the evidence supports no such reasonable inference, the movant must be awarded a directed verdict or judgment as to punitive damages."); *Greenlee v. Imperial Homes Corp.*, 1994 WL 465556, at *9 (Del. Super. July 19, 1994) ("When the Court construes the facts most favorably for the plaintiffs and the evidence permits no reasonable inference a defendant's conduct is sufficiently outrageous to warrant imposition of punitive damages, summary judgment on punitive damages is appropriate. . . . The penal aspect of public policy considerations which justify the imposition of punitive damages require the Court impose these damages only after a close examination of whether the defendant's conduct is outrageous because of evil motive or reckless indifference to the rights of others.").

[21] *Lillquist*, 1995 WL 7900993, at *3 (emphasis added).

[22] *See Dickerson v. Murray*, C.A. No. S14C-07-026, at *10 (Del. Super. Mar. 24, 2016) ("After viewing the record in a light most favorable to the Plaintiff, there is no genuine issue of material fact with respect to Plaintiff's claim for punitive damages.").