

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

**Diversified Property Solutions,** )  
**LLC,** )  
 )  
Plaintiff, )  
 )  
v. ) C.A. No. N15C-01-039 CEB  
 )  
**Spectrum Tax Consultants** )  
**USA, Inc.,** )  
 )  
Defendant. )

**ORDER**

This is a fairly routine commercial dispute in which the plaintiff has moved for summary judgment. The defense filed an answering brief and I permitted the plaintiff to file a reply brief and expected to consider the pleadings on the briefs.

But thereafter, the defense requested oral argument on the motion, and in light of the plaintiff’s reply brief, defense counsel requested permission to file a sur reply. Defense counsel’s request was reiterated when I called the parties together for routine motions on May 18, 2016. At that time, defense counsel informed the Court that it filed a motion “to ask [t]he Court to *either* schedule argument . . . *or* submit the motion on briefs.” The Court clarified defense counsel’s request as follows:

The Court: . . . I’m here because you are trying to ring my bell and tell me *either* call it for oral argument *or* file a sur reply brief, *one or the other*. Is that right?

Counsel: *Your Honor, yes.* . . . and I would also like [to] respond to the waiver argument, whether it’s at oral argument or in writing.

So, it all seemed clear enough to the Court. But, if there was any doubt, the Court reiterated the two alternatives throughout the hearing:

The Court: I can do this by paper *or* I can do it by argument. . . .

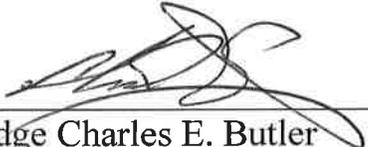
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The Court: . . . So it doesn't really matter to me whether I see a reply *or* a sur reply *or* decide it on the briefs *or* do this oral argument.

*One way or the other* I want to hear fully from both sides.

There was a choice to be made: either oral argument or a sur reply brief, not both. The two options were always separated by “or,” a conjunction which is “used as a function word to indicate an alternative.”<sup>1</sup>

The Court felt that permitting a sur reply would prompt a request for a sur reply *ad infinitum*. After discussing it with both parties, the Court concluded that the more prudent option was to schedule oral argument during which both parties would have the opportunity to fully express their position. We scheduled argument for Monday, June 13, 2016. Accordingly, defense counsel's request for permission to file a sur reply is **DENIED**.



Judge Charles E. Butler

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<sup>1</sup> *Or*, Merriam-Webster's Collegiate Dictionary (10th ed. 1996); see also *Schoolhouse Rock!: Conjunction Junction*, <https://www.youtube.com/watch?v=4AyiKgz9tKg> (last visited June 8, 2016) (“And then there's ‘or.’ O-R, when you have a choice like ‘this or that.’”).