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August 4, 2014

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Re: *CCC Atlantic, LLC v. Grey*
C.A. No. 8739-VCN
Date Submitted: July 17, 2014

Dear Counsel:

Plaintiff CCC Atlantic, LLC (“CCC”) filed a motion for reargument pursuant to Court of Chancery Rule 59(f) in response to the Court’s recent letter opinion partially resolving the motion to dismiss of Defendants, Joseph Grey, Esq. (“Grey”) and his law firm, Cross & Simon, LLC.¹ The Court’s opinion concluded that CCC lacked standing to assert its claim against Grey for breach of fiduciary

¹ *CCC Atl., LLC v. Grey*, 2014 WL 3044444 (Del. Ch. July 3, 2014).

duty because a receiver order vested CCC's claim to the settlement proceeds in CCC's receiver.²

The Court's opinion and accompanying order were filed on July 3, 2014. CCC wrote on July 10, 2014 to explain that on June 30, 2014 the action giving rise to the receiver order was settled and the receivership ended. Defendants point out that a proposed stipulation and order, with an effective date of July 15, 2014, ended the receivership and permitted the return of CCC's property to it.³

A Rule 59(f) motion may be granted "if the moving party demonstrates that the Court's decision was predicated upon a misunderstanding of a material fact or a misapplication of the law that was outcome determinative of the earlier litigation."⁴ Furthermore, "[r]eargument under Court of Chancery Rule 59(f) is only available

² The dismissal was without prejudice.

³ Resp. of the Defs. and Countercl. Pls. to the Pl./Countercl. Def. CCC's Mot. for Recons. of the Court's July 3, 2014 Order, Ex. 2. Defendants also argue that Plaintiffs likely could have notified the Court of the settlement before it issued its letter opinion on July 3, 2014. See Resp. of the Defs. and Countercl. Pls. to the Pl./Countercl. Def. CCC's Mot. for Recons. of the Court's July 3, 2014 Order, Ex. 3.

⁴ *Millien v. Popescu*, 2014 WL 656651, at *1 (Del. Ch. Feb. 19, 2014) (citations and quotations omitted).

to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion.”⁵

CCC argued that the vacating of the receivership order should cause the Court to reconsider its earlier conclusion. The Court disagrees. First, CCC’s submission of new information, well after the hearing on the motion to dismiss, asks for the Court to consider new evidence in contravention of general practice under Rule 59(f). Similarly, no misunderstanding of a material fact is asserted in CCC’s motion for reargument; the Court evaluated the record before it and the development of new information at a later date is not a misunderstanding of fact. Second, CCC’s new information is not outcome determinative. The fact that the receiver order fell away does not change the Court’s conclusion that CCC lacked standing at the time it filed its complaint in this action.⁶ A later change to CCC’s entitlement to prosecute the claim against Grey does not impact this earlier conclusion which would remain unchanged by CCC’s motion.

⁵ *Reserves Dev. LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, at *1 (Del. Ch. Dec. 31, 2007) (citation omitted).

⁶ *See Comm. of Merchs. & Citizens Against Proposed Annexation, Inc. v. Longo*, 1996 WL 769764, at *6 (Del. Super. Nov. 18, 1996) (“[S]tanding is determined at the time a plaintiff files suit.”).

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Thus, CCC's motion for reargument is denied.

The Court requests CCC and Plaintiff Karman Development Group, LLC to respond to its letter of July 3 soliciting the parties' views as to whether the Court should retain jurisdiction under the clean-up doctrine or otherwise.

IT IS SO ORDERED.

Very truly yours,

/s/ John W. Noble

JWN/cap

cc: Barry M. Willoughby, Esquire
Bradley P. Lehman, Esquire
Register in Chancery-K