

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

AFH HOLDING ADVISORY, LLC,)
GRIFFIN VENTURES, LTD., and THE)
AMIR & KATHY HESMATPOUR)
FAMILY FOUNDATION,)

Plaintiffs, Counterclaim)
Defendants,)

v.)

C.A. No. N12C-09-045 MMJ
CCLD

EMMAUS LIFE SCIENCES, INC., a)
Delaware corporation,)

Defendant, Counterclaim)
and Third-party Plaintiff,)

v.)

AMIR HESHMATPOUR,)

Third-Party Defendant.)

On Plaintiffs and Counterclaim Defendants AFH Holding & Adivsory, LLC,
Griffin Ventures, Ltd., and the Amir & Kathy Heshmatpour
Family Foundation’s Motion for Reargument

DENIED

ORDER

Daniel Y. Zohar, Esquire, Zohar Law Firm, P.C., Chad M. Shandler, Esquire, Brock E. Czeschin, Esquire, Nicole C. Bright, Esquire, Jason J. Rawnsley, Esquire, Richards, Layton & Finger, P.A., Attorneys for Defendant, Counterclaim and Third-party Plaintiff

Sean J. Bellew, Esquire, David A. Felice, Esquire, Ballard Spahr LLP, Attorneys for Third-party Defendant

Johnna M. Darby, Esquire, Darby Brown-Edwards LLC, Anthony Galano, III, Esquire, Jordan Wolff, Esquire, Ellenoff Grossman & Schole LLP, Attorneys for Plaintiffs and Counterclaim Defendants

JOHNSTON, J.

By Memorandum Opinion dated May 15, 2013, the Court granted Defendant and Counterclaim/Third Party Claim Plaintiff Emmaus Life Science, Inc.'s Motion for Partial Summary Judgment. The Court declared as a matter of law that:

- (1) the Offering has been terminated;
- (2) the Advisor Shares have been properly canceled;
- (3) LOI III has been properly terminated by Emmaus; and
- (4) AFH Holding & Advisory, LLC, Griffin Ventures, LTD., The Amir & Kathy Heshmatpour Family Foundation, and Amir Heshmatpour must return all Advisor Shares certificates.

The Court also granted in part and denied in part Plaintiffs' and Third-Party Defendant Amir Heshmatpour's Motion for Summary Judgment. Partial summary judgment was granted in favor of Plaintiffs and Heshmatpour on the grounds that Emmaus is not entitled to compensatory damages on its fraud and fraud in the inducement claims, on the grounds that such damages would be duplicative. Partial summary judgment was denied against Plaintiffs and Heshmatpour on the grounds that Emmaus has set forth a *prima facie* case for entitlement to punitive damages based on Plaintiffs' and Heshmatpour's alleged fraud in the inducement and fraud. Although the Court could not grant summary judgment in favor of

Emmaus on the issue of punitive damages, the Court found that Emmaus does not have a likelihood of success on the merits of Emmaus's claim for an award of punitive damages.

AFH Holding & Advisory, LLC, Griffin Ventures, LTD., and The Amir & Kathy Heshmatpour Family Foundation ("Movants") have moved for reargument. Movants argue that the Court misapprehended four facts in a manner that has affected the outcome of the decision. First, at the time of Mark Diamonds' deposition, his employment with Aegis Capital Corporation had ended. Thus, Diamond did not testify on behalf of Aegis during his deposition. Second, Movants contend that there is no evidence that Aegis was *unable*, as opposed to *unwilling*, to move forward with a \$5 million Offering pursuant to LOI III. Third, Movants assert that the Court misapprehended the fact that Emmaus terminated the engagement with Sunrise Securities Corporation, and that there is no evidence that AFH prevented Sunrise from moving forward with an IPO that would satisfy the requirements of the Offering. Finally, Movants state that the Court misapprehended the fact that Emmaus's July 19, 2012 letter did not explicitly seek to terminate LOI III on the grounds of AFH's failure to obtain firm underwriting commitments of at least \$10 million.

In its Opposition to Motion for Reargument, Emmaus challenges each of these four arguments. First, Emmaus argues that Movants have failed to state how Diamond's testimony, as a former employee of Aegis, would have changed the outcome of the Opinion. Second, regardless of whether Aegis was unwilling or unable to proceed with the Offering, AFH failed to obtain the required firm underwriting commitments. Third, because AFH failed to obtain firm underwriting commitments, Sunrise was unable to complete the Offering. Finally, the July 19, 2012 letter incorporated by reference the June 21, 2012 letter, which provided written notice of the reasons that LOI III was terminated.

The purpose of moving for reargument is to seek reconsideration of findings of fact, conclusions of law, or judgment of law.¹ Reargument usually will be denied unless the moving party demonstrates that the Court overlooked a precedent or legal principle that would have a controlling effect, or that it has misapprehended the law or the facts in a manner affecting the outcome of the decision. It is the moving party's burden to show that the court's misunderstanding of a factual or legal principle is both material and would have changed the court's ruling.² A motion for reargument should not be used merely to rehash the

¹*Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

²*In re Mobilactive Media, LLC*, 2013 WL 1900997, at *1 (Del. Ch.).

arguments already decided by the court.³ Reargument only is available to re-examine the existing record. New evidence generally will not be considered on a Rule 59(e) motion.⁴

The Court has reviewed and considered the parties' submissions. All four issues raised in the Motion for Reargument were fully considered by the Court in reaching its decision. The Court gave Diamond's factual testimony the weight it deserved. The failure to obtain the required firm underwriting commitments prevented consummation of the Offering, and gave Emmaus the contractual right to terminate LOI III. The record evidence demonstrates that Emmaus provided sufficient written notice of its reasons for termination.

There is no basis upon which the Court should alter its opinion. The Court did not overlook a controlling precedent or legal principle, or misapprehend the law or the facts in a manner affecting the outcome of the decision.

THEREFORE, the Motion for Reargument is hereby **DENIED**.

The parties shall confer regarding an implementing order for the May 15, 2013 Memorandum Opinion. Counsel shall submit a proposed stipulated order (or if the parties cannot agree, competing proposed orders) by June 21, 2013.

³*Middletown Square Assoc., LLC v. Jasinski*, 2012 WL 6845689, at *1 (Del. Super.).

⁴*Reserves Development, LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, at *1 (Del. Ch.).

IT IS SO ORDERED.

/s/ Mary M Johnston

The Honorable Mary M. Johnston