

**IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

1401 CONDOMINIUM OWNERS)	
ASSOCIATION,)	
)	
Plaintiff,)	
v.)	Case No.: CPU4-12-003606
)	
PATRICIA, JOHN & PETER)	
KOSTYSHYN,)	
)	
Defendants.)	

**MEMORANDUM OPINION AND ORDER ON DEFENDANT’S MOTIONS FOR
REARGUMENT, INVESTIGATION, AND CONTINUANCE**

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Self- Represented Defendants

INTRODUCTION

This is a debt/breach of contract action surrounding the payment of condominium fees from November 2006 through September 2012. The Plaintiff, 1401 Condominium Owners Association (Plaintiff), alleges that the Defendants, Patricia, John, and Peter Kostyshyn (Defendants), failed to pay condominium fees and assessments on their property located at 1401 Pennsylvania Ave, Unit 1605, Wilmington (Property). Plaintiff alleges that the Defendants are

required to pay such fees under the Plaintiff's governing documents and rules and regulations, and therefore the Plaintiff is entitled to judgment in the amount of \$48,264.14.

On January 21, 2014, the Court granted Summary Judgment in favor of Plaintiff, finding that Defendants are obligated to pay monthly condominium fees, which Defendants failed to do, and have not produced any evidence showing that they have paid such fees. The Court found that Plaintiff's affidavit, signed by Sandra Borse, bookkeeper for Plaintiff, sets forth the allegation that Defendants have not paid the condominium fees, the amount owed, and the date of the last payment, and Defendants have not rebutted any statements in the affidavit with valid defenses or arguments. The Court dismissed all of the Defendants' counterclaims, and determined that all other civil motions filed by Defendants were moot as a result of the granting of Summary Judgment.

The Motions

On January 31 2014, Defendants filed a Motion for Reargument, alleging that the Court's decision was arbitrary and capricious, that the Defendants did not receive proper notice, and they were not provided with the proper due process. Defendants allege that they have contested the amount due and the number of years that they have allegedly failed to pay fees. The Defendants therefore request reargument and seek recusal of the sitting judge on the basis of bias, prejudice, and partiality.

On February 6, 2014, Defendant Peter Kostyshyn filed a Motion for a public investigation on the record of Chief Judge Alex Smalls, Judge John Welch, and Commissioner Mary McDonough. Defendant alleges that the aforementioned individuals have violated court rules, and have committed "severe abuses." Defendant seeks that the "liaison justice of the Delaware Supreme Court appoint an impartial panel to conduct a public hearing of [the] charges

of abuses of office and power.” Defendant Peter Kostyshyn also filed a Motion for Continuance on the reargument until he receives copies of “everything in file of this case, including the alleged service of suit.”

LEGAL STANDARD

Court of Common Pleas Civil Rule 59(e) provides: “A motion for reargument shall be served and filed within 5 days after the filing of the Court’s opinion or decision. The motion shall briefly and distinctly state the grounds therefor. ...The Court will determine from the motion and answer whether reargument will be granted.” Motions for reargument will be granted only in limited circumstances “where the movant demonstrates that ‘the Court has overlooked a decision or principle of law that would have controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected.’”¹ Motions for Reargument will not be granted if the movant seeks to have the Court analyze the same evidence or arguments already decided by the Court.²

DISCUSSION

The time for filing a Motion for Reargument under Rule 59(e) is five days from the date of the issuance of the Court’s decision. Because the amount of time prescribed is less than eleven days, weekends and holidays are excluded from the computation of time.³ The Court’s decision on Plaintiff’s Motion for Summary Judgment was issued on January 21, 2014. Thus, the last day for filing a motion for reargument would have been January 28, 2014. Defendants filed their Motion for Reargument on January 31, 2014, three days outside the date for filing.

¹ *Rutledge v. S&L Contractors, Inc.*, 2007 WL 3231625, at *2 (Del. Com. Pl. Oct. 15, 2007) (quoting *Carolozzi v. Fid. & Cas. Co.*, 2001 WL 755941, at *1 (Del. Super. Ct. 2001)).

² *Anderson v. R.A. Midway Towing*, 905 A.2d 746 (Table), at *4 (Del. Com. Pl. Mar. 12, 2007) (citing *Wilmington Trust Company v. Nix*, 2002 WL 356371 (Del. Super. Feb. 21, 2002)).

³ CCP Civ. R. 6(a); *Rutledge*, at *1.

Under Rule 6(b), the time cannot be enlarged, and therefore the Defendants' Motion is time barred.⁴

Even if the Defendants had filed within the necessary time, the Motion should be denied on its merits. Defendants do not present the Court with any new facts or evidence that would allow the Court to reopen the matter for argument under Rule 59, or that would require the Court to reconsider its findings of fact or conclusions of law determined in its granting of summary judgment.⁵ Defendants contend only that their position was denied on arbitrary and capricious grounds, but do not identify any facts supporting such an argument.

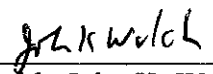
With respect to Defendant Peter Kostyshyn's request for an investigation of the Judicial Officers, this Court lacks jurisdiction for such an investigation, especially as Defendant requested that a liaison from the Delaware Supreme Court appoint an impartial panel to conduct the investigation. This Court cannot dictate that the Supreme Court perform such a request.

Finally, with respect to Defendant Peter Kostyshyn's Motion for Continuance, the Court denies this Motion, as it relates to the Motion for Reargument, which has been denied as well.

CONCLUSION

Accordingly, the Defendants' Motion for Reargument pursuant to Rule 59(e), Motion for an Investigation, and Motion for Continuance are **DENIED**.

IT IS SO ORDERED this 18th day of February, 2014.



The Honorable John K. Welch
Judge

⁴ CCP Civ. R. 6(b); *Rutledge*, at *1.

⁵ See *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969); *Orsini Topsoil v. Carter*, 2004 WL 1098338, at *3 (Del. Com. Pl. May 18, 2004).