

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

GEOFFREY SCOTT	)	
	)	
Plaintiff,	)	
	)	
	)	C. A. No. N11C-12-066
v.	)	
	)	
KATHLEEN MORGAN,	)	
CINDI, INC., and TURKEYS, INC.	)	
	)	
Defendants.	)	

Submitted: August 5, 2014  
Decided: October 27, 2014

On Defendant's Motion for New Trial

**DENIED.**

On Defendant's Motion to Extend, Vacate, Stay, Dismiss Order of Judgement [sic]  
by Matter of Law to Superior Court Civil Rule 50(1), and as to Plaintiff's Count  
VII – Granted by Judge Charles H. Toliver, IV. on October 17, 2013

**DENIED.**

## ORDER

This 27<sup>th</sup> day of October, 2014, upon consideration of Defendant's Motion for a New Trial, Plaintiff's Response in Opposition, the Delaware Supreme Court's Order dated September 22, 2014 and Defendant's Motion to Extend, Vacate, Stay, Dismiss Order of Judgement [sic] by Matter of Law to Superior Court Civil Rule 50(1), and as to Plaintiff's Count VII – Granted by Judge Charles H. Toliver, IV. on October 17, 2013 (hereinafter "Motion to Vacate"), it appears to the Court that:

- (1) At the core of this litigation are several agreements made between Plaintiff and Defendant Morgan whereby Plaintiff loaned Defendant Morgan money to operate several businesses with the expectation of repayment on the loans including interest. Trial in this matter occurred on September 23-25, 2013. Before the case was submitted to the jury, Plaintiff moved for Judgment as a Matter of Law which the Court granted from the bench. The Court then issued a written Order on October 17, 2013 requiring Defendant to pay Plaintiff the amount of money necessary to return the parties to their status quo prior to the loans.

(2) On October 29, 2013, Defendant filed a Motion for New Trial “for purpose of due process of law”<sup>1</sup> asserting three grounds:

1. Without presence of Jury, Plaintiff, Defendant, Judge concluded jury trial preceding closing arguments, issuing rule as a matter of law pursuant to Superior Court Civil Rule 50(1), and Plaintiff’s Count VII – Pltf’s claim of rescission based on mutual mistake of the parties. Rescission could only bring Defendant back to settlement of C.A. 6495, Delaware Court of Chancery.
2. Direct relation of C.A. 6495 known to Judge Toliver.
3. Lack of Discovery, trial witness subpoenas [sic], known to Judge Toliver. Judge Toliver permitted Plaintiff’s first counsel to withdraw halfway through process, then denied Defendant full discovery production and witness subpoenas [sic].<sup>2</sup>

(3) In response to the Motion, Plaintiff asserts that Defendant’s motion is vague and ambiguous and, therefore, does not comply with the particularity requirements of Super. Ct. Civ. R. 7(b).<sup>3</sup> Plaintiff argues that if Defendant’s Motion seeks a new trial pursuant to Super. Ct. Civ. R. 59(a), it is precluded because the case had not been tried when the Court ruled as a matter of law.<sup>4</sup> Plaintiff asserts that the substance

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<sup>1</sup> Def. Mot. for New Trial, D.I. 84, pg. 1.

<sup>2</sup> *Id.* at 2.

<sup>3</sup> Super. R. Civ. 7(b) provides that “[a]n application to the Court for an order shall be made by motion which...shall state with particularity the grounds therefor.”

<sup>4</sup> Pl. Resp., D.I. 86, ¶ 6-8.

of Defendant's Motion is that of a Motion for Reargument of the Judgment as a Matter of Law Motion pursuant to Super. Ct. Civ. R. 59(e).<sup>5</sup> Plaintiff argues that the Motion is time-barred because it was filed seven business days after the entry of the Court's Order.<sup>6</sup> Should the Court deem the Motion timely filed, Plaintiff submits that the Motion "should still fail as it is a transparent attempt to rehash arguments already decided by this Court."<sup>7</sup>

(4) On December 31, 2013, Defendants appealed the Court's October 17, 2013 Order granting Judgment as a Matter of Law to the Delaware Supreme Court.<sup>8</sup> On January 10, 2014, Defendant filed the Motion to Vacate in which Defendant "move[d] the court for a dismissal"<sup>9</sup> and stated the following assertions in support thereof:

1) Office of Sheriff, West Chester, PA served notice to Defendant of scheduled sheriff sale of Defendant's personal property on January 22, 2014 in connection with judgment.

2) Notice of Appeal of Judgment, no. 634, 2013, filed November 15, 2013 in Supreme Court of State of Delaware

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<sup>5</sup>*Id.* at ¶ 11.

<sup>6</sup>*Id.* at ¶ 12.

<sup>7</sup>*Id.* at ¶ 13.

<sup>8</sup>Notice of Appeal, D.I. 91.

<sup>9</sup>Def. Mot. to Vacate, D.I. 94, pg. 1.

3) Motion for a new trial docketed in Superior Court of State of Delaware

4) Status hearing scheduled for January 13, 2014 in Supreme Court in connection with “status of case” that sheriff sale is scheduled on.

5) Notice is hereby given that Kathleen Morgan will file motion to courts for monetary relief and legal assistance in all matters of the corporation, Turkeys Inc. whose assets are also under seizure.

6) Cross-claim, (CPU4-13-003466) e-filed November 12, 2013 in Court of Common Pleas [sic], State of Delaware, New Castle County. Plaintiff, Kathleen Morgan, Defendant, Geoffrey Scott.

7) Cross-claim C.A. No 8918 VCG e-filed September 18, 2013, and subsequently withdrawn without prejudice, Plaintiff, Kathleen Morgan and Defendants, Geoffrey Scott and David Carpenter, will be re-filed in Superior Court.

8) Malicious prosecution claim, against Robert Penza, Defendant (Kathleen Morgan) counsel, in CA6495 VCL and David Wilks, Defendant (Kathleen Morgan) counsel in settlement only CA 6495, will be filed and submitted to court pleading relief from judgment and seeking monetary damages, for attorneys’ disposal and control of Geoffrey Scott’s money to third parties, which caused Kathleen Morgan to lose two of her Capriotti franchises at a loss over ten million, and created Geoffrey Scott’s lawsuit against Kathleen Morgan for Geoffrey Scott’s money given to third parties by the attorneys in CA 6495.

- (5) Plaintiff did not respond to Defendant’s Motion to Vacate. On January 13, 2014, following a Status Conference, the Court determined that the Superior Court had been divested of jurisdiction

over the case upon receiving Defendant's Notice of Appeal to the Delaware Supreme Court and, as such, no pending actions remained before the Court.<sup>10</sup>

- (6) On September 22, 2014, the Delaware Supreme Court issued an Order affirming the October 17, 2013 Order that granted Judgment as a Matter of Law.<sup>11</sup> In the Order, the Delaware Supreme Court noted that the Superior Court found that both parties agreed that an oral contract existed and acknowledged that a mutual mistake of fact as to an essential term of the contract arose.<sup>12</sup> As such, the Superior Court did not err in determining that the agreement was voidable and it was proper to return the parties to their status quo.<sup>13</sup>
- (7) Any application made to the Court by motion must meet the requirements set forth in Superior Civil Rule 7(b), that "An application to the Court for an order shall be made by motion which...shall state with particularity the grounds therefor."<sup>14</sup> Super. Ct. Civ. R. 59 provides litigants provisions by which to request a new trial or reargument on a matter. "A new trial may be granted as to all

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<sup>10</sup> Judicial Action Form, D.I. 96.

<sup>11</sup> *Morgan v. Scott*, 2014 WL 4698487, at \*3 (Del. Sept. 22, 2014).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> Super. Ct. Civ. R. 7(b).

or any of the parties and on all or part of the issues in an action in which there has been a trial for any of the reasons for which new trials have heretofore been granted in the Superior Court.”<sup>15</sup> 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.”<sup>16</sup> Motions made pursuant to Superior Civil Rule 59(a) and 59(e) may be granted or denied at the Court’s discretion.<sup>17</sup>

- (8) Defendant’s Motion for a New Trial alleges no comprehensible grounds upon which the Court finds it appropriate to grant a new trial. Defendant’s arguments are vague and unclear but, it appears to the Court that Defendant’s two arguments are that granting Judgment as a Matter of Law was inappropriate and that the decision to allow Plaintiff to obtain new counsel was somehow prejudicial to Defendant’s discovery process.
- (9) As to Defendant’s argument that Judgment as a Matter of Law was inappropriate, the Delaware Supreme Court considered the merits of

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<sup>15</sup> Super. Ct. Civ. R. 59(a).

<sup>16</sup> Super. Ct. Civ. R. 59(e).

<sup>17</sup> See Super Civ. R. 59(b)(“the Court shall determine...whether a new trial shall be granted or denied.”); Super Civ. R. 59(e)(“The Court will determine...whether reargument will be granted”).

that argument in its September 22, 2104 Order and, finding no legal error, affirmed this Court's decision.<sup>18</sup> Therefore, this Court finds no basis for granting a new trial under Super. Ct. Civ. R. 59(a) and will not disturb the October 17, 2013 Order granting Judgment as a Matter of Law. Likewise, the Court finds it inappropriate to grant Defendant's Motion pursuant to Super. Ct. Civ. R. 59(e) because the Motion was untimely as it was filed more than five days after the written Order.<sup>19</sup>

- (10) As to Defendant's argument that Defendant was unduly prejudiced by Plaintiff obtaining new counsel, Defendant fails to present any argument regarding the reasons why Defendant was prejudiced. As such, the Court finds that argument lacks merit.
- (11) Defendant's Motion to Vacate also lacks sufficient grounds and specificity required by Super. Ct. Civ. R. 7(b). Although the Court affords some leniency to a *pro se* party and Delaware Courts typically "look to the substance of *pro se* litigants' filings rather than rejecting

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<sup>18</sup> *Morgan v. Scott*, 2014 WL 4698487, at \*3.

<sup>19</sup> Super. Ct. Civ. R. 59(e) requires that the motion be filed within 5 days.

them for formal defects,”<sup>20</sup> the Court notes that “there is no different set of rules” that apply to *pro se* litigants.<sup>21</sup>

(12) Construing Defendants Motion to Vacate most liberally, the Court surmises that Defendant seeks relief from judgment pursuant to Super. Ct. Civ. R 60(b).<sup>22</sup> Defendant asserts none of the enumerated grounds upon which relief from judgment is appropriate under that Rule; therefore, the Court will evaluate Defendant’s Motion to Vacate under the “any other reason justifying relief” provision. However, even after characterizing Defendant’s Motion as a Motion to Vacate, the Court cannot discern even a scintilla of any argument capable of review. Instead, Defendant merely recites several “facts” including causes of action that she anticipates filing in other Delaware courts.

The Court finds no grounds upon which to grant relief.

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<sup>20</sup> *City of Wilmington v. Flamer*, 2013 WL 4829585, at \*4 (Del. Super. May 22, 2013).

<sup>21</sup> *Draper v. Med. Ctr. of Delaware*, 767 A.2d 796, 799 (Del. 2001).

<sup>22</sup> Super. Ct. Civ. R. 60(b) provides that:

On motion and upon such terms as are just, the Court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

NOW, THEREFORE, IT IS **ORDERED** that Defendant's Motion for a New Trial is hereby **DENIED** and Defendant's Motion to Extend, Vacate, Stay, Dismiss Order of Judgement [sic] by Matter of Law to Superior Court Civil Rule 50(1), and as to Plaintiff's Count VII – Granted by Judge Charles H. Toliver, IV. on October 17, 2013 is hereby **DENIED**.

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/s/Ferris W. Wharton, Judge