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

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) C.A. No.: CPU4-12-002911
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Submitted: September 26, 2013 Decided: October 2, 2013

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ORDER ON BORLA PERFORMANCE INDUSTRIES, INC.'S MOTION FOR REARGUMENT

Defendant Borla Performance Industries, Inc. ("Borla") brings this Motion for Reargument, pursuant to *Court of Common Pleas Civil Rule* 59(e). Borla seeks to reargue this Court's Order of September 16, 2013, denying summary judgment on the breach of

contract claim brought by Plaintiff Tektree, LLC ("Tektree"). This is the Court's Final Decision and Order.

Procedural History

On July 15, 2013, Borla filed two motions for summary judgment. In the first motion, Borla sought summary judgment on TekTree's breach of contract claim; in the second motion, Borla requested summary judgment on its breach of contract counterclaim against TekTree.

On September 16, 2013, the Court entered an Order on both motions. The Court granted Borla's motion for summary judgment on the counterclaim, but denied its motion for summary judgment on TekTree's breach of contract claim. The Court reasoned:

In sum, the present record does not reflect that Borla took adequate steps to ensure that its employees did not violate the Agreement. An issue of material fact exists as to whether Borla breached the Agreement by failing to assure that Xia did not violate the Non-Solicitation Provision. A more thorough inquiry into the facts is needed to clarify the application of the law in this case. Accordingly, Borla's first motion for summary judgment must fail.¹

On September 26, 2013, Borla filed the present Motion for Reargument. Borla argues that it fulfilled its contractual obligations "by taking steps to make certain that its employee, Ms. Xia, did not violate the terms of the Non-Solicitation Provision." Borla identifies these "steps" as advising Ms. Xia that if she violated the Non-Solicitation Provision, both she and Borla could be held liable for breach of contract. Thus, Borla

2

¹ TekTree, LLC v. Borla Performance Industries, et al., C.A. No. CPU4-12-002911, at 7 (Del. Com. Pl. Sept. 16, 2013) (ORDER).

concludes, "the evidence identified by the Court as lacking was in the record and justifies the grant of summary judgment."²

To date, TekTree has not filed a response to Borla's Motion for Reargument.

Discussion

Motions for Reargument are governed by *Court of Common Pleas Civil Rule* 59(e), which 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. Within 5 days after service of such motion, the opposing party may serve and file a brief answer to each ground asserted in the motion. The Court will determine from the motion and answer whether reargument will be granted.³

A motion for reargument is not a chance for a party to reiterate arguments already decided by the Court.⁴ "A motion for reargument will be denied unless the court overlooked controlling principles or misapplied the law or facts in such a way that would change the outcome of the underlying decision."⁵

Borla filed the present Motion ten days after the filing of the Court's September 16, 2013 decision. Rule 59(e) requires that motions for reargument be filed within five days of the Court's decision.⁶ Thus, Borla's Motion for Reargument is untimely and must be denied.

3

² Defendant's Motion for Reargument at ¶ 6, *TekTree* (C.A. No. CPU4-12-002911).

³ Court of Common Pleas Civil Rule 59(e) (emphasis added).

⁴ Strong v. Wells Fargo Bank, 2013 WL 1228028, at *1 (Del. Super. Jan. 3, 2013) (citation omitted).

⁵ Independence Mall v. Wahl, 2013 WL 871309, at *1 (Del. Super. Jan. 17, 2013) (citation omitted).

⁶ CCP Civ. R. 59(e).

Even assuming *arguendo* that Borla's Motion for Reargument was procedurally sound, Borla has failed to distinctly state the grounds upon which its request may be granted. Instead, Borla rehashes arguments previously presented to the Court, which have already been decided.

Borla seems to suggest that the Court has made a misapplication of fact. Borla points to a letter it sent to Ms. Xia, advising her of potential liability should she violate the Non-Solicitation Provision. According to Borla, the letter establishes that Borla fulfilled its contractual obligations in that it took "steps to make certain" that Ms. Xia did not violate the Non-Solicitation Provision.⁷ This very argument was presented to the Court in Borla's motion for summary judgment, and is not proper grounds for reargument. Furthermore, the letter alone does not resolve the issue identified by the Court in its September 16, 2013 Order: whether Borla "took *adequate* steps to ensure that its employees did not violate the Agreement."

Conclusion

For the foregoing reasons, it is hereby ORDERED that Defendant Borla Performance Industries, Inc.'s Motion for Reargument is **DENIED**.

IT IS SO ORDERED this 2nd day of October, 2013.

Alex Smalls, Chief Judge.

Tektree v. Borla-ORD Oct 2 2013

⁷ Def.'s Motion for Reargument at ¶ 6, *TekTree* (C.A. No. CPU4-12-002911).

⁸ TekTree, C.A. No. CPU4-12-002911, at 7 (Del. Com. Pl. Sept. 16, 2013) (ORDER).