COURT OF CHANCERY
OF THE
STATE OF DELAWARE

STEPHEN P. LAMB
VICE CHANCELLOR

New Castle County Court House
500 N. King Street, Suite 11400
Wilmington, Delaware 19801

Submitted: November 4, 2005
Decided: November 30, 2005

David Chrin
2953 Silver Lake Blvd.
Cuyahoga Falls, OH 44224

Peter B. Ladig, Esquire
The Bayard Firm
222 Delaware Ave., Suite 900
P.O. Box 25130
Wilmington, DE 19899

RE: David Chrin v. Ibrix, Inc. and Steven Orszag
C.A. No. 20587

Dear Mr. Chrin and Mr. Ladig:

Mr. Chrin, the plaintiff, has moved pursuant to Court of Chancery Rules 59(f) and 59(e) for clarification and reargument or, alternatively, alteration or amendment of this court's October 19, 2005 opinion and order granting in part the defendants' motion to dismiss his complaint.[1] A court may grant reargument under Rule 59(f) when it appears that "the [c]ourt has overlooked a decision or principle of law that would have controlling effect or the [c]ourt has misapprehended the law or the facts so that the outcome of the decision would be effected."[2] Under Rule 59(e), a motion to alter or amend a judgment may be granted "if the plaintiff demonstrates (1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or to prevent manifest injustice."[3] However, a court will not grant a motion for reargument or alteration if the plaintiff "merely restates arguments already made in slightly different form and rejected by the court."[4]

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[1] *Chrin v. Ibrix Inc.*, 2005 Del. Ch. LEXIS 161 (Del. Ch. Oct. 19, 2005).
[2] *Miles v. Cookson*, 677 A.2d 505, 506 (Del. 1995).
[3] *Nash v. Schock*, 1998 Del. Ch. LEXIS 139, at *4 (Del. Ch. July 23, 1998).
[4] *Shell Oil Co. v. Shell Petroleum, Inc.*, 1992 Del. Ch. LEXIS 151, at *1-2 (Del. Ch. July 20, 1992); *Miles*, 677 A.2d at 506 (explaining that a motion for reargument must be denied if it represents a mere rehash of arguments already made at trial and during post-trial briefing).

The plaintiff contends that the court prematurely dismissed Count XI of the complaint, arguing that it misapprehended or overlooked paragraph 6 of the Stock Purchase Agreement.[5] The plaintiff asks the court to reconsider its finding that paragraph 6 of the Stock Purchase Agreement is not an implied three-year employment contract but rather a vesting schedule releasing his shares from the company's right to repurchase them upon certain enumerated events. After reviewing the parties' submissions, the court concludes that the plaintiff is merely restating arguments made in his answering brief in opposition to the defendants' motion to dismiss, which the court has already considered and rejected.[6] Therefore, this motion is DENIED. IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

[5]Paragraph 6 of the Stock Purchase Agreement states:

> One-third of the shares subject to vesting shall be released from the repurchase option on the first anniversary of the date of this agreement and 1/36 of the shares subject to vesting shall be released from the repurchase option on the last day of each month thereafter, until all such shares subject to vesting are released from the repurchase option (provided in each case that purchaser's employment relationship with the company has not been terminated prior to the date of any such release). Fractional shares shall be rounded to the nearest whole share. The Purchaser shall not, without the prior written consent of the Company, transfer any shares subject to vesting as to which the Repurchase Option has not yet expired.

[6] Indeed, the plaintiff admits in his motion for reargument that his argument "augments and clarifies what had already been argued in [his] answering brief in opposition to defendants' motion to dismiss."