

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

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Decided: July 24, 2006

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***RE: Richard Schoon, et al. v. Troy Corp.
C. A. No. 1677-N***

Dear Counsel:

Plaintiff Richard Schoon has moved for reargument of the court's memorandum opinion and order of June 27, 2006 ("Memorandum Opinion"), "on the issue of whether he had a proper purpose for seeking to inspect the books and records of defendant Troy Corporation." In support of his motion, Schoon's counsel submitted a 16-page brief and an appendix of 25 documents. Troy's counsel responded with an even longer brief and an even more voluminous appendix.

A court may grant reargument or reconsideration when it appears that the court "overlooked or misapprehended the factual or the legal principles governing the disposition of the motion."¹ The standard is flexible, allowing the court to

¹ *VGS, Inc. v. Castiel*, 2003 WL 1794210, at *1 (Del. Ch. Mar. 27, 2003).

grant a motion for reargument or reconsideration if the “court has overlooked a decision or principle of law that would have a controlling effect or the court has misapprehended the law or the facts so that the outcome of the decision would be affected.”²

Trial in this consolidated action was delayed due to the parties’ efforts to resolve their dispute amicably and a related stay of the litigation. As it happened, this delay served to moot Schoon’s request, as all parties recognize. Thus, at the time of the post-trial argument, Schoon’s counsel represented there was no part of Schoon’s request that was “still viable.”³ In other words, by the time of trial and post-trial argument, Schoon’s complaint was moot.

In light of this fact, the court’s views expressed at the June 8 hearing about Schoon’s purpose in making his demand, and the recapitulation of those views at pages 3-4 of the Memorandum Opinion are mere *dicta* and do not constitute judicial findings that could have preclusive effect in any other litigation between these parties. That conclusion is further evidenced by the fact that Section IV of the Memorandum Opinion, summarizing the holding, makes no mention of Schoon or his claim.

With this clarification, the motion for reargument is DENIED, except to the extent that the Final Order entered July 17, 2006, shall be and hereby is modified to include a new paragraph 16 as follows:

16. The complaint of Richard Schoon filed pursuant to 8 *Del. C.* § 220(d), on September 29, 2005, is dismissed as moot.

IT IS SO ORDERED.

/s/ Stephen P. Lamb
Vice Chancellor

² *Id.*

³ Tr. of June 8, 2006 hearing at 91.