

SUPERIOR COURT
OF THE
STATE OF DELAWARE

RICHARD F. STOKES
JUDGE

SUSSEX COUNTY COURTHOUSE
1 THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947
TELEPHONE (302) 856-5264

N. Christopher Griffiths, Esquire
Timothy M. Holly, Esquire
Connolly Bove Lodge & Hutz, LLP
1007 North Orange Street
P.O. Box 2207
Wilmington, DE 19899

Stephani J. Ballard, Esquire
Law Offices of Stephani J. Ballard, LLC
1308 Delaware Avenue
Wilmington, DE 19806

RE: ***Lester R. Shaffer, Shawn Brittingham & Christopher Story v. William Topping, Ralph W. Holm, Jr. and Town of Georgetown***
C.A. No. S11C-01-004 RFS

Submitted: September 6, 2012

Decided: September 14, 2012

Plaintiffs' Motion for Partial Reargument. Denied.
Plaintiffs' Request for Leave to Amend the First Amended Complaint. Granted.

Dear Counsel:

Plaintiffs' Rule 59 motion to reargue the dismissal of Count IV of the First Amended Complaint is denied. Count IV alleged that Defendants violated the Whistleblowers' Protection Act ("the Act").¹ Plaintiffs alleged that Councilwoman Sue Barlow ("Barlow") was Plaintiffs' "supervisor" and that Plaintiffs were discriminated against for discussing police business with her. 19 *Del.C.* §1703(4).

¹Title 19 *Del.C.* §1701 through §1708.

A motion for reargument is the proper vehicle for seeking reconsideration by the trial court of its findings of fact or conclusions of law.² It is not a device for raising new arguments.³ A Rule 59(e) motion will be denied unless the court has overlooked a controlling precedent or has misapprehended the law or the facts.⁴

Plaintiffs now allege that they were discriminated against because they reported their complaints to a “public body,” that is, Barlow, who is an elected official of the Town of Georgetown. § 1702(4)c.

Plaintiffs argue that their allegation that Barlow was Plaintiffs’ supervisor “lead the Court to believe” that they rested on this theory alone. They assert that their “intention is (and has been)” to seek broader protection under the Act.

This argument fails. The Court ruled on the allegations made in Count IV, and Plaintiffs’ unspoken intentions play no part in resolving a motion to dismiss.

In the alternative, Plaintiffs request approval to amend the First Amended Complaint. Defendants oppose, arguing that § 1703(1) requires that the “public body” not be the Employer. This section prohibits an employer from discriminating against employees, here Plaintiffs, “because the employee. . . reports. . . to a public body, verbally or in writing a violation which the employee knows. . . has occurred. . . .” Nothing suggests that the public body must be an entity outside of or other than the employer.

Defendants also argue that Barlow is not a “public body” because she is an elected official of a town, not a city, as alleged by Plaintiffs. Section 1702(4)c. defines public body to mean, among other things, “An elected official of a county, city, or school district or employee of them.” Plaintiffs assert that “city” and “town” are synonymous.

Rule 15(a) provides that motions to amend shall be freely given when justice so requires. Plaintiffs have made this showing. They are granted leave to amend Count IV to state a claim pursuant to §1703(1) and (2), including the element of the “public body” being

²*Cummings v. Jimmy’s Grille, Inc.*, 2000 WL 1211167 (citing *Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del.1969)).

³*Id.*

⁴*Bd. of Mgrs of DELJIS v. Gannett, Co.*, 2003 WL 1579170, at *1 (Del.Super.).

an elected official of a “city.”

Plaintiffs’ motion for reargument is **DENIED**. Plaintiffs’ request for leave to amend the First Amended Complaint is **GRANTED**.

IT IS SO ORDERED.

Very truly yours,

/s/ Richard F. Stokes

Richard F. Stokes

Original to Prothonotary