

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

WILLIAM T. WHITENACK, JR. and	)	
MICHELE S. CARINO,	)	
	)	CIVIL ACTION NUMBER
Plaintiffs,	)	
	)	11C-12-095-JOH
v.	)	
	)	
THOMAS G. LACKEY, and	)	
LUCREZIA LACKEY, COGENT	)	
BUILDING DIAGNOSTICS, J. FRANK	)	
PETER, DOORDEN BUILDING &	)	
REMODELING, INC., and STUCCO	)	
CODE, INC.,	)	
	)	
Defendants/Third Party Plaintiffs,	)	
	)	
v.	)	
	)	
THOMAS G. LACKEY, and	)	
LUCREZIA LACKEY,	)	
	)	
Third Party Defendants.	)	

*Submitted: April 8, 2013
Decided: April 15, 2013*

MEMORANDUM OPINION

*Upon Defendants' Cogent Building Diagnostics' and J. Frank Peter's Motion for
Reargument - **DENIED***

Appearances:

Scott G. Wilcox, Esquire, Whiteford, Taylor, Preston, LLP, Wilmington, Delaware.
Attorney for Plaintiffs.

John H. Newcomer, Jr., Esquire, Morris James, LLP, Wilmington, Delaware. Attorney
for Defendants/Third Party Defendants, Thomas G. Lackey and Lucrezia Lackey.

Herbert W. Mondros, Esquire, Margolis Edelstein, Wilmington, Delaware. Attorney for Defendants/Third Party Plaintiffs, Cogent Building Diagnostics and J. Frank Peter.

Theodore A. Kittila, Esquire, and Mark A. Kearney, Esquire, Elliot Greenleaf, Wilmington, Delaware. Attorneys for Defendant, Stucco Code, Inc.

David L. Baumberger, Esquire, Chrissinger & Baumberger, Wilmington, Delaware. Attorney for Defendant, Doorden Building & Remodeling, Inc.

HERLIHY, Judge

Defendants, Cogent Building Diagnostics and J. Frank Peter move to reargue this Court's bench ruling of March 26, 2013, denying their motion to compel. The underlying circumstances of this matter are that Thomas and Lucrezia Lackey sold their house to plaintiffs, William Whitenack and Michele Carino. The plaintiffs executed a purchase money mortgage for \$700,000. Defendant Diagnostics performed an inspection of the house.

As a result of an apparent number of problems with the home, the plaintiffs ceased payments on the mortgage. The Lackeys, in turn, filed a foreclosure action in this Court and the plaintiffs filed a Chancery action for rescission of the mortgage based on a claim of fraud. Before either case went to trial in either court, the plaintiffs and the Lackeys settled both cases. The defendants have sought to obtain a copy of those agreements.

The only considerations on a motion for reargument are whether the Court overlooked something that would have changed the outcome of the earlier decision, such as misapprehending the applicable law or the facts of the case.¹ It is not an opportunity to rehash arguments previously made.²

Simply put, defendants rehash the argument advanced in their original motion to compel. They cite the same case, *Beard Research, Inc. v. Kates*,³ as they had in their original motion. The majority of their remaining argument is identical to that made

¹ *McElroy v. Shell Petroleum, Inc.*, 1992 WL 397468, 618 A.2d 91 (Del. 1992).

² *Id.*

³ 2008 WL 5330557 (Del. Ch. Dec. 15, 2008).

previously and which this Court correctly rejected. They offer nothing new than the bland pabulum that relevancy for discovery purposes is broader than relevancy at trial. While that general rule is correct, they have yet to advance a cogent, compelling reason for obtaining what is so often not relevant and not obtained, even in discovery.

Their efforts smacks of an effort to obtain information to use for settlement purposes. Tactical reasons of otherwise irrelevant material are not a basis for discovery.

The only new case defendants advance is *Charbonneau v. State*.⁴ Other than stating that it is a criminal case with its constitutional overlay of due process, the Court finds defendants' invocation of *Charbonneau* to be worthy of no more comment. It is just blatantly inapposite.

For the reasons stated herein, the defendants' Cogent Building Diagnostics' and J. Frank Peter's motion for reargument is **DENIED**.

IT IS SO ORDERED.

/s/ Jerome O. Herlihy _____
J.

⁴ 904 A.2d 295 (Del. 2006).