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

REINVESTMENT II, LLC,	)
Appellant,	)
v.	) C.A. No. N12A-12-011 MJB
BOARD OF ASSESSMENT REVIEW	)
OF NEW CASTLE COUNTY and	)
NEW CASTLE COUNTY, a Political	)
Subdivision of the State of Delaware	)
	)
Appellees.	)

Submitted: October 3, 2013 Decided: January 27, 2014

Upon Appellant's Motion for Reargument, DENIED.

# **OPINION**

William J. Rhodunda, Jr., Esq., Rhodunda & Williams, Wilmington, Delaware, Attorney for Appellant.

Wilson B. Davis, Esq., Assistant County Attorney, New Castle County Office of Law, New Castle, Delaware, Attorney for Appellees.

BRADY, J.

#### I. Introduction

Before the Court is a Motion for Reargument filed by Reinvestment II, LLC. Reinvestment II seeks to reargue the Court's September 20, 2013, decision which concluded that Reinvestment II is not entitled to a property tax exemption pursuant to 9 *Del. C.* § 8105, which applies to property that is owned by a school and used for educational or school purposes. New Castle County filed a response in opposition to the Motion for Reargument on October 3, 2013. For the reasons stated below, Reinvestment II's Motion for Reargument is **DENIED**.

# II. FACTS<sup>2</sup>

## A. Background

The Maurice J. Moyer Academy ("Moyer Academy") is a public charter school that commenced operations in 2006 at 610 and 611 East 17<sup>th</sup> Street ("Property").<sup>3</sup> The Property originally belonged to the Sills/Moyer Education Fund until the Education Fund defaulted on its mortgage obligation to the Reinvestment Fund.<sup>4</sup> After defaulting, on July 15, 2010, the Sills/Moyer Education Fund transferred the Property to Reinvestment II, a wholly-owned subsidiary of the Reinvestment Fund,<sup>5</sup> via a deed in lieu of foreclosure.<sup>6</sup> Reinvestment II permitted the Moyer Academy to continue operations on the Property through a lease.<sup>7</sup>

K12 Classroom DE, LLC ("K12"), which was appointed by the State of Delaware to manage the Moyer Academy, has a lease agreement with Reinvestment II for the Property on which

<sup>&</sup>lt;sup>1</sup>9 Del. C. § 8105.

<sup>&</sup>lt;sup>2</sup>The facts section is based, substantially, on the facts as recited in Court's decision on which Appellant seeks reargument through the instant motion. Unless stated specifically, the facts recited herein are based on the facts that the Court had before it when rendering its September 20, 2013 decision.

<sup>&</sup>lt;sup>3</sup>Record (hereinafter "R.") at 3.

<sup>&</sup>lt;sup>4</sup>*Id.* at 126.

<sup>&</sup>lt;sup>5</sup>The Reinvestment Fund is a non-profit Pennsylvania corporation that is considered a national leader in neighborhood revitalization based lending projects. *Id*.

<sup>&</sup>lt;sup>6</sup>Id.

 $<sup>^{7}</sup>Id$ .

the Moyer Academy operates.<sup>8</sup> It is unclear what rights, if any, the Moyer Academy has under K12's lease with Reinvestment II. The lease agreement requires an annual rent of \$615,299.44 to be paid to Reinvestment II.<sup>9</sup> K12 pays this rent through funds it receives from the Department of Education.<sup>10</sup> According to Reinvestment II, the rent it receives indirectly from the Department of Education is "insufficient even to cover the debt service on the [Property's] mortgage,"<sup>11</sup> and therefore it "does not secure any profit."<sup>12</sup>

In 2011, because the Property was being used for educational purposes, Reinvestment II filed for a property tax exemption under 9 *Del. C.* § 8105. This exemption would allow Reinvestment II to avoid paying property taxes for the land on which the Moyer Academy operates. On August 23, 2011, the New Castle County Office of Law denied Reinvestment II's application, finding the Property was not owned by a school. Reinvestment II filed a timely appeal of this denial on September 22, 2011 and the Board held a hearing on November 8, 2012. The Board's decision resulted in a two-two vote, with two members finding Reinvestment II to be a fiduciary of the Moyer Academy, and therefore entitled to the property tax exemption under Section 8105. In accord with the Board's rules and procedures, Reinvestment II's appeal was denied because a majority of the Board members failed to vote in favor of reversal. Reinvestment II thereafter appealed to this Court, contending it was entitled to the exemption under Section 8105.

\_

<sup>&</sup>lt;sup>8</sup>*Id.* at 53–54.

<sup>&</sup>lt;sup>9</sup>R. at 126.

<sup>&</sup>lt;sup>10</sup>*Id*. Reinvestment II argued that it does not profit from the rent because the rent is needed to maintain the Property. *Id*. <sup>11</sup>Appellant Op. Br., C.A. No. N12A-12-011, at 4 (Apr. 11, 2013).

 $<sup>^{12}</sup>Id$ 

<sup>&</sup>lt;sup>13</sup>9 Del. C. § 8105.

<sup>&</sup>lt;sup>14</sup>R. at 126.

 $<sup>^{15}</sup>Id.$ 

 $<sup>^{16}</sup>Id$ 

<sup>&</sup>lt;sup>17</sup>Id. at 131; Rules of Procedure of the Board of Assessment Review of New Castle County, Art. VI, Sec. 3.

## B. Court's Decision Reinvestment Seeks to Reargue

On appeal from the Board's decision, neither party disputed that the Property is being used for educational purposes, because the Moyer Academy, which operates as a school, is located on the Property.<sup>18</sup> The Court's decision, which Reinvestment II now seeks to reargue, was limited to the second element of Section 8105, *i.e.*, whether the Property could properly be considered as "belonging to" a school or college.

# i. Indices of Ownership

Reinvestment II emphasized, in the appeal, the circumstances under which it took title to the Property as well as the fact that it has a lease agreement with K12, which manages the Moyer Academy. Reinvestment II asserted that the Property should be considered as "belonging to" the Moyer Academy because the Moyer Academy has sufficient "indices of ownership" of the Property, relying on *Alpha Rho Zeta of Lambda Chi Alpha, Inc. v. Inhabitants of City of Waterville*. <sup>19</sup>

This Court rejected Reinvestment II's reliance on *Inhabitants of City of Waterville*, because Reinvestment II failed to demonstrate that the Moyer Academy has similar indices of ownership as the school at issue in that case. Further, the Court explained that although K12 has a leasehold interest in the Property, the record was devoid of any evidence that the Moyer Academy has any rights under the lease. Moreover, that lease was not provided into the record and the Moyer Academy's rights, if any, under that lease were never disclosed.<sup>20</sup>

<sup>&</sup>lt;sup>18</sup>Appellee Ans. Br. at 17 ("In this case, there is no dispute that the Property is currently being used for a 'school purpose.").

<sup>19</sup>Alpha Rho Zeta of Lambda Chi Alpha, Inc. v Inhabitants of the City of Waterville, 477 A.2d 1131,1136–38 (Me.

<sup>&</sup>lt;sup>19</sup>Alpha Rho Zeta of Lambda Chi Alpha, Inc. v Inhabitants of the City of Waterville, 477 A.2d 1131,1136–38 (Me. 1984).

<sup>&</sup>lt;sup>20</sup>Reinvestment II also relied on a previous tax exemption determination made by New Castle County in support of its position that title is not required to establish ownership under Section 8105. Appellant Op. Br. at 10–11. The Court explained that case, which involved the Delaware College Prepatory Academy ("DCPA"), is distinguishable from the case *sub judice*, because there DCPA formed a wholly-owned holding company that was essentially a "legal device" created by and operated exclusively for the benefit of DCPA. R. at 129. DCPA, unlike the Moyer Academy, held full ownership of the holding company. *Id*.

## ii. Reinvestment as a Fiduciary

The Court also considered whether Reinvestment II could be considered a fiduciary of the Moyer Academy, and therefore entitled to the property tax exemption pursuant to Section 14.06.401C of New Castle County's municipal code. 21 After determining the appropriate definition of fiduciary, by considering authoritative dictionaries as well as Delaware's robust case law, the Court concluded that Reinvestment II could not properly be considered a fiduciary of the Moyer Academy based on the record before the Court. The Court explained that the definitions provided by dictionaries and Delaware case law—which stress that a fiduciary "is required to act for the benefit of another person," and "must exercise a high standard of care in managing another's money or property,"22—are inconsistent with Reinvestment II's position as the Property's owner, because the record provided no direct, legal relationship between Reinvestment II and the Moyer Academy, let alone a fiduciary relationship pursuant to which Reinvestment II was required to pursue the Academy's interests.<sup>23</sup>

<sup>&</sup>lt;sup>21</sup>Section 14.06.401C provides that "[t]he right to claim exemption shall extend to property, the title to which is held by a . . . conservator, or other fiduciary for any person who would otherwise be entitled to claim exemption under this Section." The Court noted that, in appealing the Board's decision, Reinvestment II only tangentially discussed whether it could properly be considered a fiduciary of the Moyer Academy. Reinvestment II's entire argument, on appeal, regarding its status as a fiduciary was as follows:

There is no reason that the County could have instructed the Board that the provisions of 14.06.401(C), relating to ownership of property by trustees and fiduciaries, should be construed liberally, in accordance with the clear mandate of Delaware law, to support Reinvestment's application for an educational tax exemption. That was a fundamental question of fact for the Board's determination. While some members of the Board apparently agreed with the Board's attorney, . . . that Reinvestment was not such a fiduciary, two members explicitly concluded that it was and was therefore entitled to the exemption it sought. But Reinvestment was entitled to have the Board advised of its right to have that point considered, and that it was an error of law for the County to advise the Board that it should not apply a liberal construction to that essential eligibility criterion.

Appellant Op. Br. 8–9.

<sup>22</sup>Black's Law Dictionary 702 (9th ed. 2009) (emphasis added).

<sup>&</sup>lt;sup>23</sup>McMahon, 532 A.2d at 605 ("Here the [landlord-tenant] relationship between the parties is a straightforward commercial relationship arising from contract. It is in all of its aspects an arms-length relationship. . . . There is no basis in our developed law to accord that expectation the status of 'special trust' that would render the legal remedy for breach of contract inadequate. The duty to act honestly and in conformity with statutory law that forms the gist of the claim is, in the circumstances presented, a duty fully recognized at law.").

# III. DISCUSSION

# A. Legal Standard

Reinvestment II's Motion for Reargument is governed by Superior Court Rule of Civil Procedure 59(e) ("Rule 59(e)"). Rule 59(e) 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. A copy of the motion and answer shall be furnished forthwith by the respective parties serving them to the Judge involved.<sup>24</sup>

A motion for reargument is the proper device for seeking reconsideration by this Court of its findings of fact and conclusions of law. The manifest purpose of all Rule 59 motions is to afford the . . . Court an opportunity to correct errors prior to an appeal. A motion for reargument will be granted only in the event that the Court has overlooked a controlling precedent or legal principles, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision. A motion for reargument is not an opportunity for a party to rehash arguments already decided by the Court or to present new arguments not previously raised. Further, ordinarily, a motion for reargument under Rule 59(e) properly seeks only a re-examination of the facts in the record at the time of the decision. However, in appropriate circumstances, a litigant may seek reargument based on newly discovered evidence, providing the party seeking to

<sup>&</sup>lt;sup>24</sup>Super. Ct. Civ. R. 59(e).

<sup>&</sup>lt;sup>25</sup>Hessler, Inc. v. Farrell, 260 A.2d 701, 702 (Del. 1969).

 $<sup>^{26}</sup>Id$ 

 $<sup>^{27}</sup>Id.$ 

<sup>&</sup>lt;sup>28</sup>Strong v. Wells Fargo Bank, 2013 WL 1228028, at \*1 (Del. Super. Jan. 3, 2013).

<sup>&</sup>lt;sup>29</sup> Miles, Inc. v. Cookson Am., Inc., 677 A.2d 505, 506 (Del. Ch. 1995). The Court notes that Court of Chancery Rule of Procedure 59(f), which was applied by the Court in Miles, is in all relevant respects consistent with Superior Court Rule of Civil Procedure 59(e).

introduce the new evidence demonstrates that the newly discovered evidence could not, in the exercise of reasonable diligence, have been discovered prior to the Court's decision.<sup>30</sup>

### **B.** Application

In moving for reargument, Reinvestment II asserts the following: (1) the Court's decision "achieves the absurd result of requiring the State of Delaware to pay Reinvestment funds that Reinvestment then turns around and repays the State as taxes"; (2) the absurd result would be avoided if the Court concluded, as did two members of the Board, that Reinvestment holds the property as a fiduciary of the Moyer Academy; and (3) the September 2013 conveyance of the Property from the Reinvestment Fund to the Moyer Academy supports what it has contended throughout its appeals—specifically, that it only took title to the Property to permit the Moyer Academy to continue operating and would have preferred to have transferred the Property to a willing party, such as the State of Delaware.

#### i. There is No Absurd Result

Reinvestment II asserts that denying it the property tax exemption under 9 *Del. C.* § 8105 "achieves the absurd result of requiring the State of Delaware to pay Reinvestment funds that Reinvestment then turns around and repays the State as taxes." This Court disagrees. By Reinvestment II's own admission, the rent it receives indirectly from the Department of Education, through the lease with K12, is "insufficient even to cover the debt service on the [Property's] mortgage." and therefore Reinvestment II "does not secure any profit." Reinvestment II failed to

<sup>&</sup>lt;sup>30</sup>See Shaunttel C.L. Draper v. Med. Ctr. of Delaware, Inc., 1999 WL 1441994, \*4 (Del. Super. Oct. 19, 1999) rev'd sub nom. Draper v. Med. Ctr. of Delaware, 767 A.2d 796 (Del. 2001) (reversed on other grounds) ("The time for Plaintiff to have made these new assertions was in response (written and oral) to the motion to dismiss, not in a motion for reargument."); Reid v. Hindt, 2008 WL 2943373, \*1 (Del. Super. July 31, 2008) (explaining that the movant "has the burden of demonstrating newly discovered evidence, a change in the law or manifest injustice"); see also Reserves Dev. LLC v. Severn Sav. Bank, FSB, 2007 WL 4644708, \*1 (Del. Ch. Dec. 31, 2007) (explaining that "new evidence generally will not be considered" in deciding a motion for reargument, which "is only available to re-examine the existing record").

<sup>&</sup>lt;sup>31</sup> Appellant Mot. for Reargument at 2 (Sept. 27, 2013).

<sup>&</sup>lt;sup>32</sup>Appellant Op. Br., C.A. No. N12A-12-011, at 4 (Apr. 11, 2013).

present evidence that the State does not, overall, derive more money from Reinvestment II through property tax assessments than the State pays in rental payments. Even if the monies granted and paid were identical, the Court is not persuaded such an arithmetic correlation forms a basis to find that distinguishing landlords from schools is an absurd result under the law.

### ii. Reinvestment II Failed to Establish Itself as a Fiduciary of the Moyer Academy

# a. Reinvestment II's Application to Supplement the Record

Reinvestment II now seeks to "present additional information concerning its relationship with the Sills/Moyer Foundation, K12, and the State of Delaware" that will "show that, in 2010, . . . it was expressly agreed that Reinvestment would lease the [P]roperty to K12 for the purpose of operating the . . . Moyer Academy." As explained above, a motion for reargument under Rule 59(e) "properly seeks only a re-examination of the facts in the record at the time of the decision" except, in limited circumstances, when the party seeking to introduce the new evidence demonstrates that the new evidence is recently discovered and could not, in the exercise of reasonable diligence, have been discovered prior to the Court's decision. Again, based on Reinvestment II's own admission, the new evidence it seeks to introduce relates to a deal that was brokered in 2010, well before the Court's decision finding Reinvestment II disqualified from the Section 8105 tax exemption. As a result, the Court shall not permit Reinvestment II to present evidence that could have, in the exercise of reasonable diligence, been discovered and presented previously.

# b. The Court Properly Concluded Reinvestment II is Not A Fiduciary

As stated above, the accepted definitions and reasonable interpretation of fiduciary connotes that one is *required* to act for the benefit of another. The Court is satisfied that, in appealing to this Court, Reinvestment II failed to establish that it is required to act in the Moyer Academy's best

 $<sup>^{33}</sup>Id$ 

<sup>&</sup>lt;sup>34</sup>Miles, Inc. v. Cookson Am., Inc., 677 A.2d 505, 506 (Del. Ch. 1995).

<sup>&</sup>lt;sup>35</sup>See supra note 30 and accompanying text.

interest. For the reasons previously recited, there is no basis to permit Reinvestment II to

supplement the record and present additional information to support its contention that it is a

fiduciary of the Moyer Academy. Accordingly, the Court's decision finding that Reinvestment II

cannot be properly considered as the Moyer Academy's fiduciary will not be disturbed.

iii. The 2013 Conveyance of the Property Does not Entitle Reinvestment II to the 2011

Property Tax Exemption

On September 11, 2013, the Reinvestment Fund conveyed the Property to the Moyer

Academy. While this conveyance is likely to affect future property tax exemption applications

under Section 8105, as the Property appears to now belong to the Moyer Academy, a school, the

2013 conveyance does not qualify Reinvestment II for the 2011 property tax exemption that is the

subject of its appeal and this Court's decision.

**IV. CONCLUSION** 

For the reasons stated above, the Court concludes that it did not "overlook[] a controlling

precedent or legal principles, [n]or [did] the Court . . . misapprehended the law or facts such as

would have changed the outcome of the underlying decision." As a result, there is no basis to

disturb the Court's decision and Reinvestment II's Motion for Reargument is **DENIED**.

IT IS SO ORDERED.

M. Jane Brady

Superior Court Judge

8