COURT OF CHANCERY
OF THE
STATE OF DELAWARE

DONALD F. PARSONS, JR.
VICE CHANCELLOR

New Castle County CourtHouse
500 N. King Street, Suite 11400
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January 13, 2011

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Ms. Ashley Adams
408 Oregano Court
Bear, DE 19701

Re: *Ashley Adams v. Calvarese Farms Maintenance Corp.*
Civil Action No. 4262-VCP

Dear Ms. Adams and Counsel:

In a Memorandum Opinion dated September 17, 2010 (the "Opinion"), I issued my post-trial findings of fact and conclusions of law with regard to a multitude of grievances brought by Plaintiff, Ashley Adams, against her homeowners' association, Defendant, CFMC.[1] In doing so, I held that CFMC was the prevailing party under Rule 54(d) and, as such, was entitled to have Adams pay its reasonable costs of litigation pursuant to that rule.[2] This matter is now before me on two separate motions: (1)

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1 I also issued an Order and Final Judgment of even date (the "Judgment"). *See* Docket Item (D.I.) 67. In addition, I note that terms in initial capitals, unless otherwise specified, have the same meaning as in the Opinion.

2 *Adams v. Calvarese Farms Maint. Corp.*, 2010 WL 3944961, at *24-25 (Del. Ch. Sept. 17, 2010) (hereinafter, the "Opinion").

Adams's motion for reconsideration and new trial; and (2) CFMC's motion for costs.[3] This Letter Opinion constitutes my rulings on each of those motions.

I. BACKGROUND

A. Brief Summary of the Disposition of Adams's Claims

[3] Adams also has moved for a new trial and to alter or amend the judgment under Court of Chancery Rules 59(a) and 59(e), respectively. Pl.'s Mot. for Rearg. ("PMR") at title page and 1.

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." *Chrin v. Ibrix, Inc.*, 2005 WL 3334270, at *1 (Del. Ch. Nov. 30, 2005). Where a movant has not alleged that her motion to alter or amend is based on a change of controlling law, the availability of newly discovered evidence, or the need to correct a clear error of law, her motion should be denied. *See In re Cencom Cable Income P'rs*, 1997 WL 770158 (Del. Ch. Dec. 3, 1997). Despite referencing Rule 59(e) in her motion, Adams does not argue that any of those three conditions exist here. Rather, she moves this Court to reconsider four of its post-trial factual findings. Thus, I treat her motion as one for reargument under Rule 59(f). *See Cantor Fitzgerald, L.P. v. Cantor*, 2001 WL 536911, at *2 (Del. Ch. May 11, 2001) (explaining that if a litigant seeks reconsideration of the trial court's findings of fact or conclusions of law, to the extent they move for alteration or amendment of a judgment under Rule 59(e), their motion is more properly considered a motion for reargument under Rule 59(f)).

Moreover, the Delaware Supreme Court has recognized that motions for a new trial under Rule 59(a) are "always addressed to the judicial discretion of the Court." *See, e.g.*, *Ross Sys. Corp. v. Ross*, 1994 WL 198718, at *2 (Del. Ch. May 9, 1994) (citing *Rappa, Inc. v. Hanson*, 209 A.2d 163, 166 (Del. 1965)); *Cantor Fitzgerald, L.P.*, 2001 WL 536911, at *2. To obtain a new trial, the disappointed litigant must show that manifest injustice otherwise would result. *In re William Lyon Homes S'holder Litig.*, 2007 WL 270428, at *1 (Del. Ch. Jan. 18, 2007). Here, Adams has offered no argument to support an entitlement to a new trial other than her bare assertion that a denial of relief would be "inconsistent with substantial justice." PMR 1-2. Thus, I also treat her motion for a new trial as a motion for reargument under Rule 59(f).

At trial, Adams sought to prove that the CFMC Board acted illegally in a number of respects, including: (1) amending the Landscape Plan;[4] (2) levying annual assessments in the absence of a Member vote; (3) mowing Reforestation areas; (4) contracting with Emory Hill; (5) creating a neighborhood directory with certain of Adams's personal contact information in it; and (6) breaching their fiduciary duties of care and loyalty. Adams also sought multiple forms of relief, including: (1) reimbursement for past payments of allegedly invalid annual assessments; (2) reimbursement for certain funds spent by the CFMC Board; (3) certain declaratory relief with respect to allegedly improper CFMC meeting notices; and (4) a permanent injunction relating to (a) enforcing certain deed restrictions and prohibiting (b) cutting Meadow areas to Turf, (c) contracting with Emory Hill, (d) installing speed bumps, and (e) levying additional annual assessments.[5] In addition, both parties sought an award of their reasonable costs.

While I found that Adams proved the Board lacked the authority to levy an annual assessment without a Member vote, I determined that she failed to carry her burden of

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[4] In adjudicating this claim, Adams disputed whether: (1) the Governing Documents granted CFMC authority to revise the Plan; (2) a Member vote was necessary to authorize the revision; (3) the CFMC Board voted to seek revision of the Plan; (4) the CFMC Board was properly constituted when it sought the revision; (5) the CFMC Board acted in bad faith or self-interest in seeking the revision; (6) Munson fraudulently misrepresented himself as president of CFMC to obtain the revision; and (7) the Land Use Department had authority to amend the Landscape Plan. *See* Op. Part II.B.

[5] *See id*. Part II.E.

proof as to each and every other issue she presented in this action. As a result, I awarded CFMC its reasonable costs as the "prevailing party" under Rule 54(d).[6]

B. Procedural History

Adams filed her complaint against CFMC on December 31, 2008 (the "Complaint"). CFMC later moved for summary judgment and, on January 22, 2010, I granted that motion in part and denied it in part.[7] Beginning on January 25, 2010, I conducted a three-day trial on Adams's numerous remaining claims against CFMC. After extensive post-trial briefing, I heard the parties' final arguments on May 19, 2010, and issued the Opinion on September 17. On or about September 28, 2010, Adams filed her motion for reconsideration and new trial. On October 4, CFMC filed its motion for costs, which Adams promptly opposed.

II. ANALYSIS

A. Plaintiff's Motion for Reargument

The standard applicable to a motion for reargument is well settled. To obtain reargument, the moving party has the burden to demonstrate either that the court has overlooked a controlling decision or principle of law that would have controlling effect, or that it has misapprehended the facts or the law such that the outcome of the decision would be different.[8] A misapprehension of the facts or the law must be both material and

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6 *See id*. Part II.E.4.b.

7 *See* D.I. 53.

8 *See, e.g.*, *Medek v. Medek*, 2009 WL 2225994, at *1 (Del. Ch. July 27, 2009); *Reserves Dev. LLC v. Severn Sav. Bank, FSB*, 2007 WL 4644708, at *1 (Del. Ch. Dec. 31, 2007); *Nevins v. Bryan*, 2006 WL 205064, at *2 (Del. Ch. Jan. 20, 2006).

outcome determinative of the earlier litigation for the movant to prevail.[9] Moreover, "[r]eargument under Court of Chancery Rule 59(f) is only available to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion."[10] As such, motions for reargument must be denied when a party merely restates its prior arguments.[11]

Adams's motion seeks reconsideration of four issues: (1) whether the Court misapprehended the facts in finding that CFMC did not authorize or perform unlawful mowing of the Reforestation areas in the subdivision; (2) whether the Court incorrectly found that CFMC was the prevailing party for purposes of Rule 54(d) and awarded costs to CFMC; (3) whether the Court incorrectly found that Adams was not entitled to the $590 fee she paid upon purchasing her home in the subdivision; and (4) whether the Court incorrectly found that CFMC could contract with Emory Hill when the Board was not properly constituted at the time it approved the contract. I address each of those issues in turn.

1. Unlawful mowing of the Reforestation areas

Adams first claims that I erred in finding that CFMC did not authorize or perform unlawful mowing of the Reforestation areas in Calvarese Farms.[12] She steadfastly argues

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9 *See Aizupitis v. Atkins*, 2010 WL 318264, at *1 (Del. Ch. Jan. 27, 2010); *Medek*, 2009 WL 2225994, at *1.

10 *Reserves Dev. LLC*, 2007 WL 4644708, at *1; *Nevins*, 2006 WL 205064, at *3.

11 *Reserves Dev. LLC*, 2007 WL 4644708, at *1; *Nevins*, 2006 WL 205064, at *3.

12 PMR 1.

that the CFMC Board authorized and performed impermissible mowing in Reforestation areas, which allegedly has had the effect of damaging certain newly planted trees.[13] The result, she complains, is that Members must foot the bill for such impermissible mowing and its resultant damage. In particular, Adams raises two specific issues that she believes warrant reconsideration. First, she suggests that the CFMC Board authorized Reforestation areas to be cut to turf level and mowed more frequently than three times per year in contravention of the Landscape Plan.[14] Second, she claims that the Board is, in some way, responsible for the "continued premature demise of the newly planted trees located within the 'reforestation' [areas]."[15]

As to the former issue,[16] Adams argues that Members were charged improper sums because the Board impermissibly authorized certain Reforestation areas to be cut to turf level, including a thirteen acre tract of land at the "front of the development" (the "Front Area").[17] In support of her position, Adams contends that CFMC "entirely ignored" her argument that the Front Area impermissibly was cut and directs the Court to

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13 *Id*. at 2-3.

14 *Id*. at 2. Both the original and amended CFMC Landscape Plans required the Reforestation areas to be kept at Meadow-length and not cut to Turf-level. *See, e.g.*, JX 1; Op. Part II.D.1; T. Tr. 37 (Mercurio) ("I explained . . . that the natural resource areas and the reforestation could not be touched.").

15 PMR 2.

16 As to the latter issue, Adams's motion contains no supporting argument beyond a conclusory statement pertaining to the demise of newly planted trees. Thus, she has waived this argument. *See Emerald P'rs v. Berlin*, 726 A.2d 1215, 1224 (Del. 1999) ("Issues not briefed are deemed waived.").

17 PMR 2.

instances in the trial transcript where she believes Munson and McLamb, either expressly or implicitly, admitted that the Front Area was being cut to Turf level.[18]

Preliminarily, regardless of whether CFMC addressed Adams's position regarding the impermissible mowing of the Front Area, she, as Plaintiff, had the burden of proof at trial. In the Opinion, I found that Adams failed to carry her burden to show that the Board authorized or performed unlawful mowing of *any* Reforestation areas at Calvarese Farms. This finding was not limited, as Adams suggests in her motion, to only Reforestation areas behind Oregano Court.[19] Equally of note, neither the testimony of Munson nor McLamb supports Adams's assertion that the Board improperly mowed the Front Area. In fact, her one citation to the trial transcript involves a portion of testimony by Munson concerning an area behind his home on Marjoram Drive and makes no mention of the Front Area or its having been mowed.[20] Moreover, nothing in McLamb's testimony fairly can be characterized as a concession that the Board authorized "bi-

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18 *Id*. at 2-3.

19 Op. at *16 ("Thus, I find that Adams did not carry her burden to establish that CFMC violated the recorded Landscape Plan by improperly mowing in Reforestation areas . . . .").

20 Although Adams asserts that "[w]itness Munson testified 'it is all being cut to turf (front of the development)," a closer inspection of the cited testimony reveals that Munson was not discussing the Front Area and, when considered in the context of his testimony as a whole, is equivocal at best. *See* T. Tr. 125-27 ("Q. Okay. Right behind your house is a street. A. That's correct. Q. And right across the street is a large acreage of tall meadows at one point? A. That's correct. Q. Which is reforested areas? A. That's correct. Q. But now that's all mowed down? A. That's correct.").

weekly mowing" of Reforestation areas in the Front Area or otherwise, as Adams contends.

Having considered Adams's arguments and the trial record, I am convinced that I did not misapprehend the facts concerning alleged mowing of Reforestation areas, including the Front Area. Evidence adduced at trial amply supports a conclusion contrary to Adams's claim, including the fact that the Board and Walsh, in his capacity as a property maintenance and housing inspector for the Code Enforcement Office, determined that no Reforestation areas were being cut improperly.[21] Adams simply was unable to carry her burden to demonstrate that a Reforestation area was being cut in contravention of the Landscape Plan. Nothing in her motion for reargument supports an argument that I erred in coming to this conclusion.[22] Therefore, I deny Adams's motion for reargument on the issue of impermissible mowing of Reforestation areas.

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[21] *See* JX 12 (an email from Walsh to McLamb stating: "Another [complaint] . . . came in, stating that not only meadow, but that reforestation areas were being mowed. . . . According to my measurements, and from data taken from the record plan, *no-reforestation area is being cut.* The only potential issue I could find were some dead and/or struggling new trees in the area. The board member I spoke with stated the board is aware and working on it. That's good enough for me, again the case is closed, I have no need to re-inspect.").

[22] I further note that Adams presented no argument in her motion for reargument as to how I misapprehended the facts or law as to my finding that she did not prove by a preponderance of the evidence that any impermissible Reforestation mowing *caused* the death of newly planted trees in the subdivision. Therefore, I also reject this aspect of her motion.

2. Rule 54(d) Costs

In the Opinion, I found that CFMC was the prevailing party under Rule 54(d) and, as such, was entitled to its costs. Adams argues that while I found that she did not meet her burden of proof on "certain" of her claims, I should not have awarded CFMC its costs because she relied on "clearly relevant facts" in bringing this action.[23] She points to a letter identifying Munson as CFMC president[24] as an example of one such relevant fact. In addition, Adams makes two subsidiary arguments: (1) CFMC did not agree to mediation whereas she did; and (2) CFMC provided her a witness list after the close of discovery, prejudicing the preparation of her case.

None of these arguments has merit. First, the standard for reargument under Rule 59(f) requires Adams to show that I misunderstood a material fact or misapplied the law.[25] That CFMC rebuffed Adams's pretrial attempts to mediate the disputes between them is neither a material fact that I misunderstood nor a principle of law that I misapplied. Indeed, it is irrelevant to both the merits of her claims at trial and my determination of the "prevailing party" under Rule 54(d). As to her second subsidiary argument, I explicitly overruled in Part II.D.5 of the Opinion Adams's objections to the

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23 PMR 3-4.

24 PX 12.

25 *See Medek v. Medek*, 2009 WL 2225994, at *1 (Del. Ch. July 27, 2009).

testimony of Y. Aidoo and McLamb under Rule 403.[26] Thus, Adams's subsidiary arguments are unpersuasive.

As to her main contention, Adams argues that I erred in awarding costs to CFMC because she brought her numerous claims in good faith based on what she considered to be relevant evidence. This contention, however, does not satisfy the standard under Rule 59(f) whereby the party seeking reargument must show that the Court overlooked a controlling law or misapprehended the law or facts so that the outcome of the trial would have been different.[27]

Rule 54(d) mandates that costs "*shall* be allowed as of course to the prevailing party unless the court otherwise directs."[28] While the use of the term "shall" implies that this Court should award costs to the party it deems to have prevailed, the Court has wide discretion in awarding or apportioning costs in each particular case,[29] including the discretion to find that no party may be regarded as having prevailed.[30] Under Rule 54(d),

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26 *See* Op. Part II.D.5 (finding the proposed testimony of Y. Aidoo and McLamb both relevant and not unfairly prejudicial to Adams's case under Rule 403).

27 *See Nevins v. Bryan*, 2006 WL 205064, at *2 (Del. Ch. Jan. 20, 2006). In fact, Adams's arguments relate more to the standard for an award of attorneys' fees pursuant to the bad faith exception to the American Rule that each party should bear its own attorneys' fees, than they do to an award of costs under Rule 54(d). Because I did not assess attorneys' fees against Adams, that standard has no application here.

28 Ct. Ch. R. 54(d) (emphasis added).

29 *See Barrows v. Bowen*, 1994 WL 514868, at *1 (Del. Ch. Sept. 7, 1994).

30 *See Vianix Del. LLC v. Nuance Commc'ns, Inc.*, 2010 WL 3221898, at *28 (Del. Ch. Aug. 13, 2010).

the "prevailing" party is the party who successfully prevails on the merits of the main issue[31] or on *most* of her claims.[32] Courts interpret the term "prevailing" to mean that a party need not be successful on all claims, but rather must succeed on a general majority of claims.[33] Moreover, Delaware courts "typically look[] to the substance of a litigation to determine which party predominated."[34]

In this case, Adams raised more than a dozen different claims and issues against CFMC. In Part II.C of the Opinion, I upheld Adams's claim that the CFMC Board could not levy annual assessments upon CFMC Members without complying with the Member voting requirements in the Declaration. As such, I found that Adams was entitled to a refund on two, but not all three, of her annual assessment claims.[35] On all of Adams's other claims or issues, however, I essentially found for CFMC. Unlike the situation in *Vianix*, where I held that neither party had prevailed for purposes of Rule 54(d) because both sides prevailed on a number of claims,[36] CFMC clearly predominated in this case. Because Adams did not succeed on the vast majority of the claims and issues she

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31 *See FGC Hldgs. Ltd. v. Teltronics, Inc.*, 2007 WL 241384, at *17 (Del. Ch. Jan. 22, 2007).

32 *Brandin v. Gottlieb*, 2000 WL 1005954, at *27 (Del. Ch. July 13, 2000).

33 *See FGC Hldgs.*, 2007 WL 241384, at *17.

34 *See Vianix Del. LLC*, 2010 WL 3221898, at *28 (internal citations omitted).

35 *See* Op. at *14-15.

36 *Vianix Del. LLC*, 2010 WL 3221898, at *28.

presented, I determined that CFMC was the prevailing party and, therefore, entitled to its costs under Rule 54.

I fully apprehended these facts and the controlling law when I issued the Opinion. Adams has offered no case or principle of law or argument that supports a contrary conclusion. Therefore, she has failed to demonstrate any basis for modifying my decision to award costs to CFMC as reflected in the Opinion and Judgment. Accordingly, I deny her motion for reargument as to costs.

3. The $590 Payment

Adams next contends that I erred in finding that she was not entitled to the $590 fee she paid into escrow upon settling on her home in 2007.[37] I interpret her motion as arguing that she is entitled to that money because she believes CFMC impermissibly retained and spent it,[38] though her grounds for making that argument are unclear. In any event, Adams's contention is without merit because it is not premised on the Court's misapprehension or misapplication of the facts or law of this case.[39]

In the Opinion, I found that a provision of the Declaration requiring a Member vote to approve annual assessments trumped inconsistent provisions of CFMC's Certificate and Bylaws.[40] As such, I held that Adams was entitled to a refund of the annual assessments she paid in 2008 and 2009 because they had not been approved by a

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37 PMR 1-2.

38 *Id*. at 4.

39 *See Pitts v. City of Wilm.*, 2009 WL 1515580, at *1 (Del. Ch. May 29, 2009).

40 Op. at *13-14.

Member vote as is required by § 1(c) of the Declaration. I denied her claim for a refund of her 2007 payment, however, because no Member vote was required to approve that charge.

Section 1(c) of the Declaration states that "[a]n annual assessment, if necessary, shall be set by a majority vote of the members who are voting in person or by proxy at the annual meeting . . . ."[41] Section 1(b) explains that while each Member, by accepting his deed upon settlement, is deemed to have agreed to pay necessary annual assessments, "such obligation to pay any annual assessment . . . [to CFMC] shall *not commence until such time that the Board of Directors of [CFMC] is comprised of homeowners of Calvarese Farms*."[42] As discussed in Part II.C.4 of the Opinion, the evidence at trial established that control over the open spaces was not transferred to the homeowners of Calvarese Farms in the form of the CFMC Board until approximately June 26, 2007.[43] The evidence also showed that Adams settled on her home and paid the $590 into escrow before that date.[44] Thus, under the express terms of Declaration § 1(b), her payment of $590 did not need to be approved by a Member vote because the homeowners of

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41 Declaration § 1(c).

42 *Id*. § 1(b) (emphasis added).

43 *See* PX 23; T. Tr. 34 (Mercurio), 90-91, 98, 106-07 (Munson), 519, 553 (Adams).

44 *See* T. Tr. 519-20, 551-52 (Adams); PX 23.

Calvarese Farms had not yet assumed control of CFMC when she made it. Adams's payment, therefore, is not invalid and she is not entitled to recover it.[45]

Adams has failed to demonstrate that I misapprehended a material fact or misapplied the law with respect to the disputed payment. Therefore, I deny her motion for reargument on the $590 payment she made in 2007.

4. The Emory Hill Contact

Finally, Adams asserts in the introduction to her motion that the "Court found that CFMC could contract with Emory Hill when the Board was not proper, holding that a vote of seven was proper, (JX26) when no more than six board of directors where (sic) allowed, and in year 2008, CFMC maintained eight board of directors, violating the requirement of six board of directors (JX25)."[46] But, Adams's motion does not address this point again. Therefore, she has not identified a material fact that I misunderstood or proposition of law that I misapplied.

In any event, Adams's position on this point lacks merit. In my ruling on CFMC's motion for summary judgment, I held that the Governing Documents authorize the

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[45] In the Opinion, I found that Adams paid $590 in 2007 "not to CFMC, but to Gemcraft, which had not yet transferred ownership of the Open Spaces or the contents of the escrow account to CFMC." Op. at *14. As Adams correctly points out, the $590 she paid into escrow in 2007 actually went to Pano Development Inc., the Calvarese Farms developer, and not Gemcraft, the Calvarese Farms builder. *See* PMR 4; *see also* PX 23; T. Tr. 90-91 (Munson), 519 (Adams). This discrepancy is immaterial, however, because it does not change the fact that she paid the disputed sum before the homeowners of Calvarese Farms assumed control of CFMC, and failed to prove that a Member vote was needed to approve that fee under the Declaration.

[46] PMR 2.

CFMC Board to contract for management services with a company such as Emory Hill.[47] Specifically, I concluded that a properly constituted CFMC Board may "contract with a firm such as Emory Hill Real Estate Services to provide services to the Board to help it carry out its responsibilities."[48] Section 4 of the Bylaws requires that the Board be made up of no less than two and no more than six Directors.[49] Additionally, § 8 of the Bylaws provides that both the president and vice president must "be chosen from among the Directors." In my post-trial Opinion, I held that, *in 2007*, CFMC had six directors consistent with the Bylaws, but the President was not a member of the six-person Board, which meant that the Board was improperly constituted.[50]

I expressly found, however, that *by 2008*, "the CFMC Board [was] properly constituted in accordance with the Governing Documents."[51] Furthermore, evidence adduced at trial demonstrated that CFMC did not contract with Emory Hill until April 2008, at which time the Board was constituted properly.[52] Thus, Adams has not sustained her burden to show that I misunderstood a material fact or misapplied the law

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47 D.I. 65, Order Memorializing the Court's Rulings Granting in Part and Denying in Part CFMC's Mot. for Summ. J., ¶ 1(a).

48 *Id*.

49 Bylaws § 4.

50 Op. at *8-9.

51 *Id*. at 25.

52 T. Tr. 485 (Simon).

as to whether CFMC properly contracted with Emory Hill. Therefore, I also deny this aspect of her motion for reargument.

B. CFMC's Motion for Costs

Pursuant to the Judgment, CFMC submitted a motion for costs, seeking $1,135.29 in fees for (1) filing, (2) copying, (3) service of subpoenas, (4) transcripts, and (5) exhibit storage.[53] Adams opposes that motion on a number of grounds, which I now discuss in turn.

First, Adams urges the Court to exercise its discretion to deny CFMC an award of its reasonable costs because "Plaintiff's claims raised critical issues and those issues were close and complex."[54] On a related note, Adams argues that if costs are awarded, they should be prorated so that CFMC is not awarded costs pertaining to issues on which Adams prevailed.[55] For the reasons discussed in the Opinion and *supra* Part II.A.2, however, I reject these arguments and find that CFMC is entitled to its costs because it is the "prevailing party" under Rule 54(d).[56]

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53 Def.'s Mot. for Costs ("DMC") 1.

54 Pl.'s Opp'n to Def.'s Mot. for Costs ("POC") 1.

55 *Id*.

56 That Adams prevailed on one issue, or even a few issues, among many others, does not entitle her to prorated costs. A court has discretion to award costs to a party who prevailed on most of her claims or defenses, even if that party did not prevail on all of such claims or defenses. *See supra* note 32.

Adams also argues that I should deny CFMC's motion for costs as untimely. She notes that the September 17 Judgment required such motion to be filed within ten days, but CFMC did not file its motion until Monday, October 4, 2010. POC 5. Under Court of Chancery Rule 6, CFMC apparently should have filed its motion

Adams also argues that the Court should deny CFMC's motion to the extent it seeks an award of costs that are not recoverable under Rule 54(d). Specifically, she objects to CFMC's claims for reimbursement for duplicative filing fees, subpoenas it issued and then withdrew, and copying costs.[57] As explained in the Opinion, a party's expenses are not coterminous with its "costs" as the latter are interpreted under Rule 54(d). Indeed, Delaware courts limit the costs permitted to be shifted under that rule to "those 'expenses necessarily incurred in the assertion of [a] right in court,' such as court filing fees, fees associated with service of process or costs covered by statute. Thus, items such as computerized legal research, transcripts, or photocopying are not recoverable."[58]

Under Rule 54(d), therefore, CFMC is not entitled to reimbursement for its expenses relating to photocopying[59] or transcript fees for a copy of the Court's summary

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the previous business day, Friday, October 1. In the meantime, however, Adams filed her motion for reconsideration on or about September 28, 2010, and it directly took issue with the Court's award of costs to CFMC. In these circumstances and in the absence of any showing that Adams suffered any prejudice in having to wait one additional business day to receive CFMC's motion detailing its claim for costs, I decline to bar that motion as untimely.

57 POC 1.

58 *FGC Hldgs. Ltd. v. Teltronics, Inc.*, 2007 WL 241384, at *16 (Del. Ch. Jan. 22, 2007).

59 *Radka v. Irman*, 2001 WL 1222094, at *1 (Del. Super. Sept. 19, 2001) ("It is well settled in Delaware, that the costs of photocopying are not recoverable under Rule 54(d).").

judgment ruling it obtained for its own use.[60] On the other hand, CFMC is entitled to its costs related to filing, service of process,[61] and the Court's storage of the trial exhibits because it reasonably incurred these costs in asserting its many defenses to Adams's claims at trial.[62]

Lastly, Adams contends that she should not be required to compensate CFMC for duplicative fees, mediation filing fees (because CFMC refused to mediate), and an allegedly illegible fee record submitted by CFMC for $91.00. As to the last item, the bill for $91.00 is not illegible; rather, though difficult to read, it is an invoice for CFMC's per page statutory filing fee for the documents it filed from October 1, 2009 to December 31, 2009.[63] Similarly, CFMC properly may recover the cost ($19.65) of filing a one-page letter informing the Court that the parties were unable to agree to mediate their dispute. On Adams's final point, it does appear that CFMC made duplicate filings in two instances. First, transactions 28198057 and 28202908 seem duplicative, but there is no

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60 *See Gaffin v. Teledyne, Inc.*, 1993 WL 271443, at *2 (Del. Ch. July 13, 1993) (noting that the costs of transcripts ordered by a party ordinarily should be borne by that party).

61 Adams challenges CFMC's claim for costs associated with serving subpoenas to certain potential trial witnesses that it subsequently withdrew because such service was "not necessary to [CFMC's] defense of this action." POC 4. I find Adams's argument unpersuasive because CFMC did call several of the witnesses it subpoenaed and it reasonably may have concluded it was necessary to serve the other potential witnesses to ensure its ability to defend against Adams's claims.

62 *See, e.g., In re Hanover Direct, Inc. S'holders Litig.*, Nos. 1969-CC, 3047-CC, 3291-CC, at ¶ 3 (Del. Ch. Dec. 9, 2010) (ORDER); *FGC Hldgs. Ltd.*, 2007 WL 241384, at *16.

63 *See* DMC Ex. A.

indication in CFMC's calculations that it requested reimbursement for either of these filings. Second, transactions 27326555 and 27330262 are duplicative and are both included in the costs CFMC claims. Therefore, I will include only one of these charges in the total costs shifted to Adams.

Thus, I award CFMC the following costs: filing fees of $244.21, process fees of $195, and storage fees of $530, for a total award of $969.21.[64]

III. CONCLUSION

For the reasons stated in this Letter Opinion, Adams's motion for reargument is denied and CFMC's motion for costs is denied in part and granted in part as stated herein.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.
Vice Chancellor

[64] *See id*. I arrive at the $244.21 figure by subtracting $28.92 from CFMC's proposed filing fee total of $273.13.