

SUPERIOR COURT
OF THE
STATE OF DELAWARE

JEROME O. HERLIHY
JUDGE

NEW CASTLE COUNTY
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WILMINGTON, DE 19801-3733

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RE: *Canal Landing Townhouse Condominium Assoc. v.
Louis Capano & Associates, Inc., et al*
C.A. No. 07C-09-162-JOH

Submitted: December 20, 2007

Decided: January 8, 2007

Upon Motion of Defendants to Dismiss - DENIED without Prejudice

Dear Counsel:

I find it peculiar, to put it most mildly, that I am receiving motions to reargue the decision which I gave to the parties in my letter of December 19th. The case which I cited *Appriva Shareholder Litigation Co., LLC v. eV3, Inc.*,¹ involved the same circumstances as those raised by those seeking reargument of that December 19th letter. There are additional documents offered in the motion to dismiss all of which the parties had as was the case in *Appriva*. The *Appriva* involved decisions by me and Judge Scott on motions to dismiss with those papers, and neither “losing” party in our opinions raised the motion to dismiss/summary judgment issue before us but did it for the first time before the Supreme Court. In my view, *Appriva* has substantially altered how we can proceed in this Court on motions to dismiss.

Since there is not unanimity regarding my ability to decide this case on the submissions to date, the motion to dismiss is **DENIED WITHOUT PREJUDICE**. The

¹ 2007 WL 3208783 (Del.).

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plaintiff can proceed with its discovery and, upon its conclusion, as long as done within the time frame of the scheduling order, any party wishing to file a motion for summary judgment may do so, also as long as done within the scheduling order time frame.

IT IS SO ORDERED.

Sincerely,

JOH/krb
Enclosure
cc Prothonotary