

May 11, 2004

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L. Vincent Ramunno, Esquire
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Ms. Barbara A. Madric
9 Golden Acres Drive – Apartment 7
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RE: John A. Faraone v. L. Vincent Ramunno and Barbara A. Madric
Civil Action No.: 2002-12-411
New Castle County Court of Common Pleas

Date submitted: April 26, 2004
Date decided: May 11, 2004

Order and Decision on Motion for Reargument and/or New Trial

Dear Mr. Faraone, Mr. Ramunno and Ms. Madric:

A bench trial for the above-referenced debt action was held on March 26, 2004. At the conclusion of trial, the Court entered a judgment in favor of the Plaintiff against Defendant Barbara A. Madric (“Madric”) for the reimbursement of all costs incurred for an economist’s report. The Plaintiff’s claims for the reimbursement of copying expenses and against Defendant L. Vincent Ramunno (“Ramunno”) were dismissed.

The Plaintiff has now filed a Motion for Reargument and/or New Trial pursuant to Rule 59 of the *Civil Rules Governing the Court of Common Pleas* for his claims against Ramunno. In his motion, the Plaintiff alleges that the Court failed to adequately consider his evidence at trial. He also provides new evidence through an affidavit executed by Madric. For the reasons that follow, the Plaintiff’s Motion for Reargument and/or New Trial is denied.

I. Motion for Reargument

“(A) [M]otion for Reargument is the proper device for seeking reconsideration by the Trial Court of its findings of fact, conclusions of law, or judgment, after a non-jury trial’.” *Husband H. v. Wife H.*, 314 A.2d 420, 422 (Del. Super. 1973), *quoting Hessler, Inc. v. Farrell*, 260 A.2d 701, 702 (Del. 1969). The contentions raised by the Plaintiff in his motion seeking a reargument of his claims against Ramunno were considered by the Court before it gave its bench ruling at trial on March 26, 2004. The Court’s findings as contained in its bench ruling contain no error of law and are fully supported by the evidence. Therefore, the Plaintiff’s motion seeking a reargument is denied.

II. Motion for New Trial

In general, the Court has the power to grant a new trial pursuant to Rule 59 of the *Civil Rules Governing the Court of Common Pleas* in order to prevent injustice. *McCloskey v. McKelvey*, 174 A.2d 691, 693 (Del. Super. 1961). Since the Court’s findings as contained in its bench ruling contain no error of law and are fully supported by the evidence, the Plaintiff must proffer new evidence that “will probably change the result [of his matter] if a new trial is granted.” *In Re: Missouri-Kansas Pipeline*, 2 A.2d 273, 278 (Del. 1938). None of the new evidence provided by Madric’s affidavit would change the Court’s decision if a new trial is granted. Therefore, the Plaintiff’s motion for a new trial is also denied.

IT IS SO ORDERED THIS _____ DAY OF MAY, 2004.

JUDGE

pc: Clerk of the Court