IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

KATHLEEN PANKOWSKI,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 2005-01-464
	)	
SUSAN CHANDLER,	)	
	)	
Defendant.	)	

Submitted: March 13, 2006
Decided: March 16, 2006

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ORDER

COMES NOW, the Court finds based upon the pleadings as follows:

1. In these proceedings both Susan Chandler (hereinafter referred to as "Chandler") and Kathleen Pankowski (hereinafter referred to as "Pankowski") move, pursuant to Court of Common Pleas Civil Rule 59(e), for the Court to reconsider its decision rendered on February 22, 2006.

2. Rule 59(e) provides:

> "(e) Reargruments. 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 therefore. 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."

3. To comply with Rule 59(e), based upon a computation under Rule 6(a) the parties herein moving for reargument were required to file such motion no later than March 1, 2006. Chandler's motion was docketed on March 1, 2006, therefore it is timely under the rules. Pankowski's motion was docketed on March 3, 2006 and it is therefore not timely under the rules.

4. While Pankowski's motion is not timely under Rule 6(a) it may be considered if the conditions of Rule 6(b) are met. Rule 6(b) provides, in relevant part, as follows:

> "…the Court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b), 59 (b), (d) and (e), 60(b), except to the extent and under the conditions stated in them."

5. Because Pankowski did not request to extend the filing period, her motion is time barred, to the extent it cannot be treated as a response to Chandler's motion. All independent allegations are denied as untimely.

6. A motion brought under Civil Rule 59(e) will be denied unless the Court has overlooked a controlling legal precedent, or the Court has misapprehended the law or facts such as would have changed the outcome of the underlying decision. *Kennedy v. Invacare Corp. and Neighborcare, Inc.*, 2006 WL 488590 (Del.Super.), citing, *Board of Managers of the Delaware Criminal Justice Information System v. Gannet Co.,* 2003 Del.Super. Lexis 27 at *4. "A motion for reargument is not intended to rehash the arguments already decided by

the court." *Kennedy* at *1, citing, *McElrov v. Shell Petroleum, Inc.,* 618 A.2d 91 (table), No. 375, 1992, Moore, J. (Del.Supr.1992) (Order).

7. Chandler argues that the Court, by disallowing only $2,350.00 of settlement help that Pankowski paid to the subsequent buyer of the property, failed to credit her for the $5,000.00 increase in the sale price realized by Pankowski on the subsequent sale. Thus, Chandler argues the Court should credit to her the sum of $5,000.00, which represents the increase in the property's sale price from $240,000 to $245,000.

8. Chandler misreads the Court's opinion on the matter of damage calculations. The Court at page 9 did not award Pankowski any amount for the sum she paid for settlement help to the subsequent purchaser. Pankowski was awarded $12,250.00 real estate commission on the second sale, $393.80 from interest on the bridge loan, and $46.10 for related electric payments. This was adjusted by the escrow amount of $3,000.00.

9 At trial Pankowski sought $2,350.00 based upon a calculation that she received $245,000 on the subsequent sale of the property but had to pay $7,350.00 settlement help. Therefore, she had a net loss of the $2,350.00. I did not find payment of settlement help to a subsequent purchaser a foreseeable consequence of the breach and such demand was denied. What Chandler seeks in this motion is a credit for Pankowski's alleged loss. There is no basis for this claim.

10. Pankowski's motion, which is time barred to the extent that it is not responsive to Chandler's motion, seeks to have the Court reevaluate its analysis and calculation of the second sale. Because the motion is not timely it is DENIED.

11. Because I find no issues raised by the motions that were not previously considered by the Court in its opinion of February 22, 2006, Chandler's motion and Pankowski's motion for reargument are DENIED.

SO ORDERED this 16th day of March, 2006.

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Alex J. Smalls
Chief Judge

Pankowski-ORD Mar 06