IN THE COURT OF COMMON PLEAS OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

KENNETH D. RUTLEDGE, Toni Rutledge, Michael J. McGee, and Donna L. McGee,	:	C.A. No. 05-12-0032
Plaintiffs,	:	
v.	:	
S & L CONTRACTORS, INC., a Delaware Corporation, and Brent Rogers, an individual,	:	
Defendants and Third-Party Plaintiffs,	:	
v.	:	
Alton Beach, Country Custom Siding, Inc. Stelljes Excavating and Paving,	:	
Third-Party Defendants.	:	

Upon the Plaintiffs' Motion for Reargument

Submitted: October 15, 2007

Decided: October 15, 2007

The Plaintiffs' Motion is denied.

Sean M. Lynn, Esquire, Hudson, Jones, Jaywork & Fisher, LLC, 225 South State Street, Dover, Delaware 19901, Attorney for Plaintiffs.

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Kimberly A. Meany, Esquire, Marshall, Dennehey, Warner, Coleman & Goggin, Post Office Box 8888, Wilmington, Delaware 19899-8888, Attorney for Third-Party Defendant, Country Custom Siding, Inc.

Trader, J.

In this civil action I hold that the plaintiffs' motion for reargument is untimely filed and is therefore denied. Furthermore, the motion for reargument should be denied because the plaintiffs did not set forth any misapprehension of law or facts that would lead the Court to reconsider its previous opinion.

On September 24, 2007, I granted the defendants' motion for summary judgment and I held that the plaintiffs' claim was time barred by the statute of limitations contained in 10 *Del. C.* §8106. The plaintiffs filed their motion for reargument on October 5, 2007. Civil Rule 59(e) of this Court provides that a motion for reargument shall be served and filed within five days after the filing of the Court's opinion. *Court of Common Pleas Civil Rule* 59(e). Under Civil Rule 6(a), where the time prescribed by the Civil Rules is less than eleven days, intermediate Saturdays, Sundays, and other legal holidays shall be excluded in the computation of time. The day of the Court's decision is also not included in the computation of time. Therefore, excluding September 24, 2007, the day of the decision, and Saturday, September 29, 2007, and Sunday, September 30, 2007, the last day for filing the motion for reargument would have been Monday, October 1, 2007. The plaintiffs did not file their motion for reargument until October 5, 2007. The time for filing a motion for reargument may not be enlarged under Civil Rule 6(b) as a result of excusable neglect. Accordingly, the plaintiffs' motion for reargument is time barred. *See Hessler v. Farrell*, 260 A.2d 701, 702 (Del. 1969).

The plaintiffs' motion for reargument should be denied on the merits. Defendants' motion for summary judgment, based on the statute of limitations, was heard on September 12, 2007. In plaintiffs' response in opposition to the motion, they contended that a different statue of limitations applied, and asserted various estoppel

arguments. Plaintiffs, however, failed to provide any evidence in the form of either deposition testimony or of a counter-affidavit to support their allegations. During the motion hearing, the plaintiffs argued for the first time that the plaintiffs did not have notice of alleged defects in the driveway and that the statute of limitations did not commence until the plaintiffs had notice. The plaintiffs, however, again did not provide any evidence or facts in the records to support their allegation. The evidence in the record supports the conclusion that the plaintiffs were aware of a defect in the common driveway as early as September 2001.

I granted defendants' motion for summary judgment on September 24, 2007, and the plaintiffs thereafter filed their motion for reargument. Plaintiffs, for the first time, attached affidavits to their present motion. The affidavits were only signed by plaintiffs Michael McGee and Donna McGee. The affidavits merely state that ". . . the facts therein contained [in the motion to reargue] are true and correct . . . ."

It has been held that motions to reargue will only be granted in limited circumstances where the movant demonstrates that "the Court has overlooked a decision or principle of law that would have controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected." *Carolozzi v. Fid. & Cas. Co.,* 2001 WL 755941, at *1 (Del. Super. Ct. 2001) (citing *Mainiero v. Microby Corp.,* 669 A.2d 320, 321 (Del. Ch. 1997)). In *Santora v. Lewis,* 1995 WL 562158, at *2 (Del. Super. Ct. 1995), the Court held that, pursuant to Rule 59(e), affidavits attached to the motions to reargue that seek to introduce new information are prohibited. The Court noted that:

> The current motion arises under Superior Court Civil Rule 59(e). That Rule does not provide for new evidence in the form of affidavits not

> before the Court in the original motion. *See Miles, Inc. v. Cookson America,* Del. Ch., C.A. No. 12310, Hartnett, J. (March 3, 1995) [now cited at 677 A.2d 505, 506](which interpreted that Court's identical rule Rule 59(f)). Thus, the Court cannot consider the affidavits.

Satora, 1995 WL 562158, at *2.

In the present case, the plaintiffs do not argue that the Court either "overlooked a decision or principle" or "misapprehended the law or facts." *See Carlozzi*, 2001 WL 755941. They, however, seek to introduce new information as evidence, which is inappropriate at this stage of the proceedings. Thus, if the plaintiffs' motion is considered on the merits, it should be denied since the plaintiffs have impermissibly move the Court to consider information that was not in evidence or part of the summary judgment record and did not request that the Court reevaluate its ruling based on an overlooked decision or principle of law.

Based on the above conclusions of law, the motion for reargument is denied.

IT IS SO ORDERED.

Merrill C. Trader
Judge