IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE

THE MRS. FIELDS BRAND, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 12201-CB
	)	
INTERBAKE FOODS LLC,	)	
	)	
Defendant.	)	

ORDER OF CLARIFICATION AND DENIAL OF MOTION FOR REARGUMENT

WHEREAS:

A. Mrs. Fields brought this suit against Interbake in April 2016 to enforce the terms of a License Agreement after Interbake purported to terminate the License Agreement before the end of its initial term, which runs until December 31, 2017.

B. By the time of trial, the issues in this case had mushroomed. Among the numerous claims and sub-issues presented, Mrs. Fields sought in Count IV of its Verified Amended Complaint (the "Complaint") damages for breach of the implied covenant of good faith and fair dealing on the theory that Interbake had "an implied obligation to provide reasonable cooperation with [Mrs. Fields] (or its designee, such as a new licensee) as the Agreement was coming to an end, in order to facilitate a smooth transition of the business."[1]

[1] *Mrs. Fields Brand, Inc. v. Interbake Foods LLC*, 2017 WL 2729860, at *40 (Del. Ch. June 26, 2017) (internal quotation omitted).

C. On June 26, 2017, the Court issued a 107-page post-trial Memorandum Opinion that was intended to resolve all issues in the case. Count IV was dismissed without prejudice for lack of ripeness. As the Court explained:

> [I]t would be premature and ill-considered to attempt to adjudicate Mrs. Fields' implied covenant claim because the License Agreement has not been terminated and remains in place for all the reasons discussed previously. Indeed, Interbake has continued to serve as licensee during the pendency of this litigation under the Standstill Order. To wade into issues of transition before the transition actually has happened would amount to the rendering of an advisory opinion.[2]

D. On July 3, 2017, Interbake filed a motion for reargument regarding an aspect of Count I of Mrs. Fields' Complaint (the "Motion").

IT IS HEREBY ORDERED, this 27th day of July, 2017, as follows:

1. When moving to reargue under Court of Chancery Rule 59(f), the movant must establish that "the Court has overlooked a decision or principle of law that would have a controlling effect or the Court has misapprehended the law or the facts so that the outcome of the decision would be affected."[3] "Where the motion merely rehashes arguments already made by the parties and considered by the Court when reaching the decision from which reargument is sought, the motion must be denied."[4]

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[2] *Id.*

[3] *In re OM Grp., Inc. Stockholders Litig.*, 2016 WL 7338590, at *2 (Del. Ch. Dec. 16, 2016) (internal citations omitted).

[4] *Id.*

2. In its Motion, Interbake asserts that Count I of the Complaint sought declaratory relief on two issues and "seeks clarification or reargument" on one of those issues that it suggests "may not have received treatment," namely "whether an implied covenant to ensure a smooth transition should be read into the agreement despite negotiations and settled terms between two sophisticated parties."[5]

3. With respect to that issue, Interbake requests that the Court enter judgment in its favor as to the part of Count I that sought a "declaratory judgment and permanent injunction requiring Interbake to provide reasonable cooperation with a smooth transition of the business associated with the Royalty Bearing Products back to Mrs. Fields or to Mrs. Fields' designated new licensee."[6]

4. Interbake contends that the relief sought in Count I noted above presents a "separate threshold issue" from the Court's ruling on Count IV that is ripe for review because "(1) litigation of this issue is unfortunately unavoidable; (2) the material facts are static; and (3) any postponement will severely prejudice Interbake."[7] With respect to the first point, Interbake cites to a Bloomberg article in which a Mrs. Fields' spokesperson is quoted as stating, just one day after the Memorandum Opinion was issued, that: "We look forward to pursuing a renewed

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[5] Motion at 1.

[6] Motion ¶ 1 (quoting Complaint ¶ 58).

[7] Motion ¶¶ 8, 9.

claim for damages arising from Interbake's improper termination attempt once the agreement has expired."[8]

5. As a matter of logic, the Court's disposition of Count IV for lack of ripeness in the Memorandum Opinion applies equally to any request in Count I for a declaration that Interbake has an implied obligation to ensure a smooth transition in connection with the anticipated expiration of the License Agreement at the end of this year. Although I would have thought this was obvious, I provide this clarification to assist the parties in crafting the form of final judgment, which should reflect that this aspect of Count I is dismissed without prejudice for lack of ripeness.

6. The statement attributed to Mrs. Fields in the Bloomberg article, if true, is disheartening to say the least. Further litigation should not be unavoidable if the parties behave like rational businesspeople and work together to transition the business.[9] In any event, the facts that may be relevant to determining any implied obligation associated with the transition are not "static" in my opinion—the initial term of the License Agreement still has more than five months to go.

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[8] Motion ¶ 11.

[9] Given the limited duration of the License Agreement, it was foreseeable when it was negotiated that the business may need to be transitioned and, indeed, the License Agreement contains a number of provisions addressing the parties' respective rights upon termination. *See Mrs. Fields Brand, Inc.*, 2017 WL 2729860, at *40 n.353. In that vein, as they game-out the end stage of their relationship, the parties would be well-advised to take to heart former Chancellor Chandler's observation that "[c]onsistent with its narrow purpose, the implied covenant is only rarely invoked successfully." *Kuroda v. SPJS Holdings, L.L.C.*, 971 A.2d 872, 888 (Del. Ch. 2009).

7. Apart from the foregoing clarification, the Motion is denied insofar as it seeks reargument because it fails to identify any decision or principle of law that would have a controlling effect that the Court overlooked, or to demonstrate that the Court misapprehended the law or the facts in a manner that would have affected the outcome of the decision rendered in the Memorandum Opinion.

8. The parties are directed to confer and to submit to the Court within five business days of the date of this order (1) a proposed schedule for briefing the fee and expense issue in accordance with the word limits set forth in the Memorandum Opinion, and (2) a form of final judgment.

Chancellor