OF THE STATE OF DELAWARE

DONALD F. PARSONS, JR. VICE CHANCELLOR

New Castle County Courthouse 500 N. King Street, Suite 11400 Wilmington, Delaware 19801-3734

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RE: Cartanza v. Cartanza, et al. Civil Action No. 7618-VCP

Dear Counsel:

In my April 16, 2013 Letter Opinion and Order (the "April 16 Order"), ¹ I ordered discovery sanctions against Defendants² under Court of Chancery Rule 37(a)(4)(A) in the amount of \$5,000. On April 23, Defendants moved for reargument or, in the alternative,

¹ *Cartanza v. Cartanza*, 2013 WL 1615767 (Del. Ch. Apr. 16, 2013).

The Court presumes familiarity with the April 16 Order and generally employs the same nomenclature as used therein.

to stay the Order pending appeal (the "Motion"). For the following reasons, Defendants' Motion is denied.

I. ANALYSIS

A. Standard

The standard applicable to a motion for reargument under Rule 59(f) is well settled. To obtain reargument, the moving party must demonstrate either that the Court overlooked a controlling decision or principle of law that would have a controlling effect, or the Court misapprehended the facts or the law so the outcome of the decision would be different.³ It is the moving party's burden to show that "the court's misunderstanding of a factual or legal principle is both material and would have changed the outcome of its earlier decision." As such, motions for reargument must be denied when a party merely restates its prior arguments.⁵

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³ See, e.g., Medek v. Medek, 2009 WL 2225994, at *1 (Del. Ch. July 27, 2009); Reserves Dev. LLC v. Severn Sav. Bank, FSB, 2007 WL 4644708, at *1 (Del. Ch. Dec. 31, 2007).

Medek, 2009 WL 2225994, at *1 (internal quotation marks omitted); see also Serv. Corp. of Westover Hills v. Guzzetta, 2008 WL 5459249, at *1 (Del. Ch. Dec. 22, 2008).

Guzzetta, 2008 WL 5459249, at *1; see also Reserves Dev. LLC, 2007 WL 4644708, at *1 ("Reargument . . . is only available to re-examine the existing record; therefore, new evidence generally will not be considered on a Rule 59(f) motion.").

B. Defendants' Motion for Reargument

Defendants assert four reasons why their Motion should be granted.⁶ First, Defendants contend that, contrary to what is stated in the April 16 Order, Sandra Cartanza is not the "sole and managing member of Defendant Cartanza Storage." Defendants, however, admitted, at least initially, that Sandra was the sole and managing member of Cartanza Grain.⁷ Furthermore, the gist of Plaintiff's claims involves allegations of wrongdoing by Sandra. In that regard, no matter what her current role at Cartanza Grain is, Sandra is a key witness in this dispute. Thus, whether Sandra currently is, or is not, the sole and managing member of Cartanza Grain is not material and would not have changed the outcome of my decision.

Defendants next assert, essentially, that they cooperated sufficiently in the efforts to schedule Sandra's deposition. This is the same argument Defendants advanced to

Plaintiff filed an opposition to the Motion, arguing primarily that Defendants' arguments were waived. Consistent with this Court's general preference for addressing issues on the merits, I have assumed, without deciding, that Defendants did not waive the arguments contained in the Motion. *See CHC Cos., Inc. v. Sanders*, 2013 WL 1952017, at *5 (Del. Ch. May 10, 2013).

See Defs. Sandra L. Cartanza and Cartanza Storage, LLC's Answer to First Am. Compl. ¶ 8 ("The defendant, Cartanza Storage, LLC was formed in Delaware on March 17, 2008 by Mrs. Cartanza as the sole and Managing member who would be entitled to all of its profits as a pass through entity.... Denied as stated that all of Cartanza Storage's profits go to Mrs. Cartanza. Admitted as to the remainder of the paragraph.").

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avoid discovery sanctions in the first place.⁸ As previously noted, motions for reargument must be denied when a party merely restates its prior arguments.

Defendants' third argument is that "Mrs. Cartanza's ability to attend her daughter's wedding during her convalescence says nothing about whether she was able to sit for a deposition " The April 16 Order, however, did not rest on whether Sandra actually could have been deposed sooner than she was, but rather was based on my finding that Defendants' counsel was not substantially justified in failing to be more forthcoming in communications with opposing counsel about Sandra's availability. As a result, the Court and opposing counsel were burdened by a motion to compel, on which Plaintiff effectively prevailed, that could and should have been avoided.

Finally, Defendants assert that, relatively speaking, Sandra's deposition was scheduled within a reasonable period of time—less than four months after Plaintiff's first request. Defendants did not agree to a definite and firm date for Sandra's deposition, however, until after Plaintiff carried out his threat to file a motion to compel. Rule 37

⁸ See Defs.' Letter to the Court dated December 12, 2012, at 2.

Defs.' Mot. for Reargument 2.

See Cartanza v. Cartanza, 2013 WL 1615767, at *3 (Del. Ch. Apr. 16, 2013) ("Defendants and their counsel could and should have done more to promote constructive and meaningful communications with Plaintiff's counsel regarding the availability and condition of a key witness like Defendant Sandra. . . . Far from being communicative and cooperative, therefore, Defendants either ignored or provided empty responses to Plaintiff's legitimate discovery inquiries.")

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explicitly provides that, in such circumstances, the Court shall grant the party seeking the

deposition attorneys' fees "unless the Court finds that the opposition to the motion was

substantially justified or that other circumstances make an award of expenses unjust." No

such mitigating circumstances existed in this case.

In short, Defendants have not demonstrated that the Court overlooked a

controlling principle of law or misapprehended the facts or the law such that reargument

would be appropriate here. In their Motion, Defendants also requested, in the alternative,

that if the Motion is denied, the April 16 Order be stayed pending appeal. A request for

such a stay is directed to the discretion of this Court in the first instance under Supreme

Court Rule 32(a). Having considered the circumstances of this case, the nature of the

underlying motion, and the relatively modest amount of the attorneys' fees involved, I

see no reason to stay the April 16 Order pending an appeal.

II. CONCLUSION

For the foregoing reasons, Defendants' Motion for Reargument, including their

related request for a stay, is denied.

IT IS SO ORDERED.

Sincerely,

/s/ Donald F. Parsons, Jr.

Donald F. Parsons, Jr.

Vice Chancellor

DFP/ptp