

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

RICHARD F. STOKES  
JUDGE

SUSSEX COUNTY COURTHOUSE  
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GEORGETOWN, DE 19947  
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January 7, 2014

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RE: *Audrey E. Sweiger v. Delaware Park, L.L.C. & Delaware Racing  
Association d/b/a Delaware Park,*  
C.A. No. S11C-10-020 RFS

\_\_\_\_\_ Date submitted: October 8, 2013

Dear Counsel:

Before the Court is Defendants' Delaware Park, L.L.C. & Delaware Racing Association d/b/a Delaware Park ("Defendants'") Motion for Reargument of Plaintiff's Audrey E. Sweiger ("Plaintiff's") Motion *in Limine* to Preclude Defendants from Denying or Otherwise Challenging Items which were the subject of Plaintiff's Request for Admissions. Defendant's Motion is **GRANTED** in part, **DENIED** in part.

**Facts and Procedural Background**

This Motion stems from an incident which occurred on the evening of January

13, 2010. On that date, Plaintiff, an eighty-one-year-old woman, visited Defendants' establishment, and was present in Defendants' casino at about 6:20 p.m. Plaintiff claims that she left the casino area and entered an adjacent glass-enclosed alcove, which Plaintiff believed to be a smoking room. Plaintiff then attempted to re-enter the casino through a different entrance and in doing so, walked into an unmarked glass window and fell to the floor. She suffered bodily injuries as a result. Other glass windows within the wall contained decals, but the one causing Plaintiff's injury did not.

During discovery, Plaintiff served Defendants a Request for Admissions under this Court's Civil Rule 36 ("Rule 36"). Out of twenty-two admissions requested, nineteen related to Plaintiff's medical bills, each asking (1) whether the bill was a true and correct copy of the bill ("Admission 1"), (2) whether the amount charged was a customary charge for the services rendered ("Admission 2"), and (3) whether such care was necessary treatment for the injuries sustained ("Admission 3"). Defendants responded that they were without sufficient information to reply to Admission 1, and denied Admissions 2 and 3. The two remaining requested admissions asked about the absence and then subsequent presence of a decal on the glass window which caused Plaintiff's injury.

Plaintiff filed a Motion *in Limine* to Preclude Defendants from Denying or

Otherwise Challenging Items which were the Subject of Plaintiff's Request for Admissions, which this Court granted.<sup>1</sup> The Court first reasoned that any requested admissions regarding the placement of a decal on the glass window which caused Plaintiff's injury were irrelevant because Defendants owed no duty to place a decal on the window. The Court then reasoned that because Defendants' responses to Admissions 1 through 3 did not adequately comport with Rule 36, the requested admissions, as they related to medical bills, which the Court did not consider to be a significant issue, could be conclusively established.

### **Analysis**

Defendants<sup>2</sup> begin by explaining how, despite Plaintiff's assertions to the contrary, their responses to her requested admissions have been timely. They claim that their response to Admission 1, to which they asserted lack of information, was adequate due to Plaintiff's failure to establish the authenticity of her medical bills.<sup>3</sup> Defendants then claim that their denials of Admissions 2 and 3 were adequate, as Plaintiff herself admitted. Additionally, they contend that their denials to Admissions

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<sup>1</sup> See *Sweiger v. Delaware Park, L.L.C.*, C.A. No. S11C-10-020 RFS, at 9 (Del. Super. Dec. 20, 2013)

<sup>2</sup> Plaintiff did not file a response to the present Motion.

<sup>3</sup> Defendants cite this Court's decision in *Calbert v. Volkswagen of America*, 1989 WL 147394 (Del. Super. Nov. 16, 1989).

2 and 3 are not insignificant because, as they claim, the reasonableness and necessity of Plaintiff's medical charges have been ultimate fact issues throughout this litigation.<sup>4</sup> Defendants agree that the bulk of this case has focused on issues of liability, but assert that they have not precluded themselves from cross-examining Plaintiff on the causation of her injuries, or whether her medical bills were reasonable and necessary.

This Court's Civil Rules permit a party to file a motion for reargument.<sup>5</sup> "[A] motion for reargument is appropriate where it is shown that the Court either overlooked a precedent or legal principle that would have controlling effect, or misapprehended the law or the facts such as would affect the outcome of the decision."<sup>6</sup> A Court should not grant the motion unless it erred in its initial ruling by overlooking issue-determinative precedent or misapplying some element such that the

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<sup>4</sup> Defendants assert that it would be "harsh" for this Court to allow factual issues relating to Plaintiff's medical bills, which they claim they have always disputed, to be conclusively established. See Defs.' Mot. for Reargument of Pl.'s Mot. *in Limine* to Preclude Defs. From Den. or Otherwise Challenging Items which were the Subject of Pl.'s Req. For Admiss. at \*3 (citing and quoting *Calbert*, 1989 WL 147394, at \*5). According to Defendants, who point to their answer to Plaintiff's complaint in which they raised the affirmative defense, "Special Damages have not been properly plead or identified," forcing these admissions on them because of mere technical deficiencies in their responses would be unjustly prejudicial.

<sup>5</sup> Super. Ct. Civ. R. 59(e).

<sup>6</sup> *Crowhorn v. Nationwide Mut. Ins. Co.*, 2001 WL 789649, at \*1 (Del. Super. June 13, 2001) (citation omitted) (internal quotation marks omitted).

prior ruling should not stand.<sup>7</sup> A motion for reargument, however, is not to be used as a tool for reiteration of arguments which were heard and rejected.<sup>8</sup>

In granting Plaintiff's initial Motion, this Court only meant to establish the matters related to Admissions 1 and 2. The Court notes that Admission 3 goes to causation. At no time throughout this litigation has this Court intended to lighten Plaintiff's burden in establishing each element of her *prima facie* case of negligence. Therefore, Defendants' responses to Admission 3 cannot be deemed conclusively established. Because this Court does not consider the authenticity or regularity of Plaintiff's medical bills to have ever been ultimate fact issues in this case, Defendants' responses to Admissions 1 and 2 will remain conclusively established for efficiency purposes.

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<sup>7</sup> *Id.* (citation omitted) (internal quotation marks omitted).

<sup>8</sup> *Id.* (citation omitted).

Based on the above, Defendant's Motion is **GRANTED** in part, **DENIED** in part.

**IT IS SO ORDERED.**

Very truly yours,

*/s/ Richard F. Stokes*

Richard F. Stokes

cc: Prothonotary  
Judicial Case Manager