

DOCKET NO. HHD CV-16-6066913 S : SUPERIOR COURT
VILLAGE MORTGAGE COMPANY : J. D. OF HARTFORD
VS. : AT HARTFORD
RONALD GARBUS, ET AL : FEBRUARY 28, 2019

RULING ON DEFENDANTS' MOTION TO REARGUE

The court has considered the defendants' motion to reargue (#151) and the plaintiff's opposition (#152). The motion to reargue concerns the court's memorandum of decision, dated January 29, 2019 (#149) (decision).

The Supreme Court, in *Hudson Valley Bank v. Kissel*, 303 Conn. 614, 624, 35 A.3d 260 (2012), reiterated the standards which govern reargument or reconsideration: "[T]he purpose of a reargument is . . . to demonstrate to the court that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. . . . It also may be used to address . . . claims of law that the [movant] claimed were not addressed by the court. . . . [A] motion to reargue [however] is not to be used as an opportunity to have a second bite of the apple. . . ." (Internal quotation marks omitted.).

"[A] motion to reargue cannot be used to correct the deficiencies in a prior motion" *Opoku v. Grant*, 63 Conn. App. 686, 692, 778 A.2d 981 (2001). "[A]s a general matter, in the absence of the discovery of some new facts or new legal authorities that could not have been presented earlier, the denial of a motion for reargument is not an abuse of the discretion of the trial court." (Emphasis omitted; internal quotation marks omitted.) *Weinstein v. Weinstein*, 275 Conn. 671, 705, 882 A.2d 53 (2005).

HARTFORD J.D.
SUPERIOR COURT
OFFICE OF THE CLERK
2019 FEB 28 PM 3 27
FILED

The defendants argue that the court shifted the burden of proof to the defendants to disprove judicially admitted facts, citing the following part of the decision, at page 7: “Although the plaintiff’s allegation in the complaint, paragraph 3, that the stock certificate was apparently returned to the defendants in June 2011 amounts to an admission, see *Ferreira v. Pringle*, 255 Conn. 330, 345, 766 A.2d 400 (2001) (‘Factual allegations contained in pleadings upon which the case is tried are considered judicial admissions and hence irrefutable as long as they remain in the case.’ (Internal quotation marks omitted.)), there is no credible evidence before the court showing that the defendants currently possess the subject stock certificate.” No other factual determination by the court is challenged in the motion to reargue.

While logical deductions may be made and reasonable inferences may be drawn from proven facts, a factfinder “may not resort to mere conjecture and speculation” (Internal quotation marks omitted.) *Motzer v. Haberli*, 300 Conn. 733, 743, 15 A.3d 1084 (2011). Without resort to mere speculation, the evidence cannot support the attenuated inference that the defendants had possession of the stock certificate at the time of trial, October 2018, more than seven years later. No burden shifting occurred.

In addition, the court concluded that the defendants are not lawful shareholders in Village Mortgage Company. The motion to reargue cites no authority and presents no analysis to challenge this conclusion. See *Packard v. Packard*, 181 Conn. App. 404, 406, 186 A.3d 795 (2018) (“analysis, rather than mere abstract assertion, required to avoid abandoning issue by failing to brief issue properly; where claim receives only cursory attention without substantive discussion or citation of authorities, it is deemed abandoned.”).

Citing *Caminis v. Troy*, 112 Conn. App. 546, 557, 963 A.2d 701 (2009), aff'd on other grounds, 300 Conn. 297, 12 A.3d 984 (2011), the defendants also argue that the court's decision implied that the return of the stock certificate to the defendants in 2011 was related to a fraudulent scheme of embezzlement by James Veneziano, perhaps in concert with the defendants, and, since the plaintiff's claim sounds in law, not in equity, the court should have applied General Statutes § 52-577 to bar it. They argue that the court's ruling is not akin to that of an injunction since it "is not coercive in nature - it merely declared that the defendants are not legitimate owners of the stock in question." See motion, p. 3.

In their post-trial brief (#147), pages 14-15, the defendants previously argued that the plaintiff's action is barred by General Statutes § 52-577. Their argument in the motion to reargue represents an attempt at a "second bite of the apple."

The court addressed this issue in its decision, at pages 9-10, and cited *Caminis v. Troy*, supra, 112 Conn. App. 559-60. As the court explained in the decision, page 10, the court looked to the ultimate remedy sought by the plaintiff: "[T]he relief sought in the plaintiff's complaint is also akin to that of an injunction, in that it seeks to prevent the defendants from acting as stockholders in the corporation with rights to own, possess, and vote the stock at issue. The complaint is not based on a note or contract or on a conspiracy and does not plead the elements of fraud or statutory theft. Accordingly, since the remedy sought is equitable in nature, the plaintiff's claim is subject to equitable defenses, but not barred by the limitations periods set forth in General Statutes § 52-577 and the other statutes cited in the defendants' first special defense."

The defendants have not shown that there is some decision or some principle of law which would have a controlling effect, and which has been overlooked, or that there has been a misapprehension of facts. See *Hudson Valley Bank v. Kissel*, 303 Conn. 624.

Accordingly, the motion to reargue is denied.

BY THE COURT

Robert B. Shapiro

ROBERT B. SHAPIRO

JUDGE TRIAL REFEREE

CHECKLIST FOR CLERK

Docket Number CV-16-6066913-S

Case Name Village Mortgage Co. VS.
Ronald Garbus, Et Al

Memorandum of Decision dated 2-28-19

File Sealed: yes _____ no X

Memo Sealed: yes _____ no X

This memorandum of Decision may be released to the Reporter of
Judicial Decisions for publication. _____

This Memorandum of Decision may NOT be released to the
Reporter of Judicial Decisions for publication. X

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.