

March 23, 2020  
204 Cleveland Lane  
Rockaway, NJ 07866

Morris County Superior Court  
Chancery Division, General Equity Part  
Washington & Court Streets  
Morristown, NJ 07960

RE: Paul Kardos vs. Fox Hills at Rockaway Condominium Association, Inc.  
Docket No.: MRS-C-102-18  
Opposition to Defendant's Motion For Summary Judgment  
Hearing Date – Friday April 9, 2020 at 9:00 am

Dear Madam or Sir:

I am the *pro se* plaintiff in the above matter. Enclosed is:

- Letter brief in opposition to Defendant's Motion for Summary Judgment.
- Proposed Order

Please forward this to the Honorable Berdote-Byrne.

Thank you for your assistance.

Very truly yours,



Paul Kardos  
973-527-1433  
[PKardos1@yahoo.com](mailto:PKardos1@yahoo.com)

Copies (via email and first-class mail):  
George Karousatos, Esq., Attorney for Defendant ([g.karousatos@bdlawfirm.com](mailto:g.karousatos@bdlawfirm.com))

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Rockaway, NJ 07866

Hon. Berdote-Byrne  
Chancery Division, General Equity Part  
Morris County Superior Court  
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Morristown, NJ 07960

RE: Paul Kardos vs. Fox Hills at Rockaway Condominium Association, Inc.  
Docket No.: MRS-C-102-18  
Letter Brief in Opposition to Defendant's Motion For Summary Judgment  
Hearing Date – Friday April 9, 2020 at 9:00 am

Dear Judge Berdote-Byrne:

I am the *pro se* Plaintiff in the above matter. Please accept this letter brief in opposition to Defendant's *Motion For Summary Judgment*.

#### STATEMENT OF FACTS

In accordance with R. 4:46-2(b), I (Paul Kardos, *pro se* Plaintiff) admit each of the facts from the *Defendants Statement of Uncontested Facts in Support of Defendants' Motion for Summary Judgment* dated March 10, 2020 (hereafter the "Uncontested Facts") as follows:

1. Paragraph 1 of the *Uncontested Facts* is admitted.
2. Paragraph 2 of the *Uncontested Facts* is admitted.
3. Paragraph 3 of the *Uncontested Facts* is admitted.
4. An additional uncontested fact is paragraph 4 of the Complaint which is repeated here:

On Thursday May 17, 2018, at 10:22 AM, the Plaintiff received a phone message from Defendant Association agent (Community Manager) Lynn Meekins stating, "*regarding your flyer for Friday folders, the board has decided not to post that, unfortunately you are attacking the board and calling them liars and that's not acceptable to be posted.*"

5. On October 31, 2018, the Defendant filed *Motion To Dismiss Plaintiff's Complaint In Lieu Of Answer*. In denying this motion, Judge Brennan made this statement (dated 18 Jan. 2019):

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The second prong of the Dublirer analysis is to balance expressional rights and private property rights. Dublirer, 220 N.J. at 85. Defendant has the right to review flyers before they are distributed on its private property and to ban flyers on its private property containing hateful or attacking language. See Dublirer, 220 N.J. at 87, Twin Rivers, 192 N.J. 344, 368 (both holding that a homeowner's association may adopt reasonable time, place, and manner restriction on speech). Defendant's rules and regulations regarding flyers and their distribution are constitutionally sound and do not constitute an unreasonable restriction on Plaintiff's Freedom of Speech.

## BACKGROUND

Paragraph 9 of the my (Paul Kardos, Plaintiff *pro se*) Complaint demands this judgment against the Defendant:

9. Declare that Defendant Association Rules and Regulations Article I section 3. A. (requiring written permission of the Board to distribute literature) violates the free speech guarantee in New Jersey's Constitution.

The Defendant's Motion asks the court to dismiss this paragraph with prejudice.

## LEGAL ARGUMENT

### I. JUDGE BRENNAN'S STATEMENT

The second sentence of Judge Brennan's statement of 18 Jan. 2019 (#5 under STATEMENT OF FACTS) is:

Defendant has the right to review flyers before they are distributed on its private property and to ban flyers on its private property containing hateful or attacking language.  
[underlining added for analysis]

The underlined part of this sentence is contrary to existing case law.

"The right to free speech allows for an "uninhibited, robust, and wide-open" discussion of public issues that "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.'" New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964).

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We do not know if Judge Brennan was unaware of the permissibility of “attacking language” or if he meant to overturn the *Times v. Sullivan* case law.

In any event the constitutionality of the Rules and Regulations Article I section 3.A was not fully litigated at that time and thus is the subject of this Defendant’s *Motion For Summary Judgment*.

## II. CASE LAW – PRIOR RESTRAINT

*Prior restraint* is defined in this case law:

“Regulations which condition the exercise of speech rights on the prior permission of a governmental official constitute a prior restraint.” Davis v. New Jersey Dept. of Law, 327 N.J.Super 59, 62 (1999).

The Fox Hills requirement for written permission of the Board to distribute literature constitutes a *prior restraint*. Imposition of prior restraint carries a heavy burden of justification:

“It is party seeking to impose prior restraints on expression that carries heavy burden of justifying imposition.” E-Bru, Inc. v. Graves, 566 F.Supp. 1476 (1983).

“Any prior restraint on exercise of First Amendment is inherently suspect, and therefore party seeking to impose the restraint carries heavy burden of justifying its imposition.” Stamy v. Packer, 138 F.R.D. 412 (1990).

## III. FREEDOM OF SPEECH DELAYED

There is a legal maxim attributed to William Gladstone and/or William Penn.

"Justice delayed is justice denied."

Similarly,

"freedom-of-speech delayed is freedom-of-speech denied."

The requirement for written permission of the Board requires the Board to act as a body, lawfully assembled.

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A corporation's directors can act only as a body, lawfully assembled. Worley v. Dunkle, 2 N.J. Super. 161, 62 (1948).

Prior to the summer of 2015, the Fox Hills Board of Directors met in meetings open to homeowners every month. Since then it has generally met 4 times per year, in April, July, October and December. So now, since the Board can only act as a body lawfully assembled, the requirement for the Board's written permission to distribute literature may take as long as 4 months (December to April) to get approval. Although this may be ok for non-political (e.g. commercial) literature, it is an unacceptable delay for political flyers (flyers having to do with the governance of the common interest community).

As an example, Fox Hills homeowners have been asked to vote by ballot on revisions to the Bylaws. There must be enough time for points and counterpoints to be made before the ballots are issued. In the past, this has been in the order of a few weeks. A one-week delay might be enough in some circumstances, although less is better, and no delay is ideal. Even a one month delay to obtain the Boards written permission is unacceptable.

The prior restraint of the written Board permission requirement prevents the free discussion of all matters relating to the governance of the community:

“A major purpose of the First Amendment is to protect the free discussion of governmental affairs, including discussions of candidates and all matters relating to political processes.” Mazdabrook Commons v. Kahn, 210 N.J. 482, 484 (2012).

#### IV. ENFORCEMENT

Rules and Regulations may have time, place and manner restrictions.

“The Board can adopt reasonable time, place and manner restrictions to serve the community's interest.” Dublirer v. 2000 Linwood Ave. Owners, Inc., 220 N.J. 71, 87 (2014)

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Since the Community Manager, as a corporation agent, has the power to enforce such restrictions, in the same manner as it does for all other Rules and Regulations, prior written approval by the Board is not necessary to enforce time, place and manner restrictions.

A Fox Hills homeowner can gain the floor at an association meeting and speak without pre-approval of their speech. Their speech is still subject to NJ law (slander, defamation, discrimination, obscenity, etc.) and Association Rules and Regulations. The speaker must self-police his own speech otherwise he is subject to fines by the Association and lawsuits. Why should political flyers be any different?

#### V. VOID FOR VAGUENESS

In addition to the freedom of speech unconstitutionality, the Association's Rules and Regulations Article I section 3.A is also unconstitutionally void for vagueness.

“For purposes of constitutional vagueness challenge, statute is “vague” not when it prohibits conduct according to an imprecise but comprehensible normative standard, but rather in the sense that no standard of conduct is specified at all” Botosan v. Paul McNally Realty, 216 F.3d. 827, 29 (2000).

“An ordinance or statute may be void for “vagueness” when its language either forbids or requires the doing of an act in terms so vague that people of common intelligence must guess at its meaning” City of Portland v. Jacobsky, 496 A.2d. 646, 46 (1985).

The language of Rules and Regulations Article I section 3.A has no standard for which the Board or anyone can know what is and is not allowed.

#### CONCLUSION

A free discussion of political issues is not possible when flyers require pre-approval due to the inevitable delays required to obtain the approval.

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A free discussion is also impossible when a governing body has the power to veto any criticism of itself as it did on May 17, 2018 (#4 under STATEMENT OF FACTS).

For the foregoing reasons, the Court should not grant the Defendant's *Motion For Summary Judgment* and should declare that the Defendant's Association Rules and Regulations Article I section 3. A. (requiring written permission of the Board to distribute literature) violates the free speech guarantee in New Jersey's Constitution.

Date: March 23, 2020

By   
Paul Kardos

CERTIFICATION OF SERVICE

I certify that on March <sup>23</sup>~~21~~, 2020, I sent a copy of the Letter Brief and proposed Form of Order to the following by regular mail (USPS).

George Karousatos, Esq.  
Biancamano & DiStefano, P.C.  
10 Parsonage Road, Suite 300  
Edison, NJ 08837

Date: March 23, 2020

By   
Paul Kardos

Paul Kardos  
204 Cleveland Lane, Monroe Bldg.  
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973-527-1433 cell  
Plaintiff *Pro Se*

<p>Paul Kardos</p> <p style="text-align: center;"><i>Plaintiff</i></p> <p style="text-align: center;">v.</p> <p>Fox Hills at Rockaway Condominium Association, Inc.</p> <p style="text-align: center;"><i>Defendant</i></p>	<p>Superior Court of New Jersey Chancery Division Morris County</p> <p>Docket No. MRS-C-102-18</p> <p style="text-align: center;">Civil Action</p> <p style="text-align: center;"><i>DECLARATION ORDER</i></p>
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THIS matter coming before the Court on application by Paul Kardos, Plaintiff *pro se*, and the Court having reviewed the moving papers and good cause having been shown,

IT IS ON this \_\_\_\_\_ day of April 2020

DECLARED that the Fox Hills at Rockaway Condominium Association, Inc. Rules and Regulations Article I section 3. A. (requiring written permission of the Board to distribute literature) violates the free speech guarantee in New Jersey's Constitution; and

IT IS further ordered that a copy of this Declaration shall be served on all council of record within seven (7) days of its receipt by the Plaintiff.

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Maritza Berdote-Byrne, J.S.C.