

November 8, 2018
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 Motion to Dismiss Plaintiff's Complaint
Hearing Date – Friday November 30, 2018 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 to Dismiss Plaintiff's Complaint.

Please forward this to the Honorable Robert J. Brennan.

Thank you for your assistance.

Very truly yours,



Paul Kardos
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Hon. Robert J. Brennan
Chancery Division, General Equity Part
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RE: Paul Kardos vs. Fox Hills at Rockaway Condominium Association, Inc.
Docket No.: MRS-C-102-18
Letter Brief in Opposition to Motion to Dismiss Plaintiff's Complaint
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Dear Judge Brennan:

I am the *pro se* plaintiff in the above matter. Please accept this letter brief in opposition to defendant's Motion to Dismiss Plaintiff's Complaint.

STATEMENT OF FACTS

Under STATEMENT OF FACTS in the defendants BRIEF IN SUPPORT OF ITS MOTION TO DISMISS IN LIEU OF ANSWER dated Oct. 31, 2018 (hereafter "defendants brief"), the "Defendant relies on plaintiff's statement of facts" (in the Complaint). I, Paul Kardos, *pro se* plaintiff, also rely on the same statement of facts in the Complaint.

LEGAL ARGUMENT

I. FREE SPEECH

In defendant's brief, the defendant applied the three-prong test outlined in *State vs. Schmid*, 84 N.J. 535, 563 (1980) (hereafter "Schmid test") to conclude that defendant's rules and regulations do not unreasonably restrict the plaintiffs right of free speech.

There are two problems with the defendant's analysis:

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1. The Schmid test is not a perfect fit for private residential communities. See *Dublirer vs. 2000 Linwood Ave* (hereafter *Dublirer*), 220 N.J. 84 (2014). Also, id. at 83: “The court, building on *Twin Rivers*, recognized that the Schmid test was not designed “for situations when the person seeking to exercise the right to free speech is not an outsider but a property owner as well...””
2. In *Dublirer* (a situation like ours of Docket C-102-18) the court applied the Schmid test and other criteria and came to a conclusion opposite that found by the defendant in defendants brief. Note the following:

Id. at 88: “[r]easonable restrictions should be clearly written in advance and made known to the relevant community... so that written criteria can guide a boards discretion.”

Ibid: “the board allows itself to distribute materials throughout the complex, but its critics cannot do so.”

Ibid: “Nothing in our case law permits a group in power to attack its opponents yet bar them from responding in the same way.”

II. BOARD MAKES DECISIONS IN SECRET MEETINGS

A review of basic agency law will be useful. The following statements are from *A Short & Happy Guide to Business Organizations* by David G. Epstein:

1. Directors can only act as a body.
2. An individual director does not have the power to act on behalf of the corporation. ... not an agency relationship.
3. Corporate officers and employees, unlike directors, are agents of the corporation.

Also, a review of generally accepted meeting procedures will be useful. These procedures require that:

1. decisions are made by voting (there is no exception for “menial” decisions)
2. each decision is recorded in the minutes of the meeting.

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On Thursday May 17, 2018, between the time the plaintiff submitted his flyer (shortly after 7 AM) and 10:22 AM of that day, the Board (Fox Hills at Rockaway Condominium Association, Inc. board of directors, here and hereafter “the Board”) made the decision NOT to post the flyer. Since directors can only act as a body, it appears that the Board had a meeting in that 3 hour period to make their decision. Was the decision recorded according to accepted meeting procedure? Or did one or two directors decide that violation of the right to free speech was considered a “menial” decision so that agency law could be ignored?

The plaintiff does not dispute that the Board has “the power and duties necessary or appropriate for the administration of the affairs of the Association...” The plaintiff only wants the administration of Association affairs to comply with the *Condominium Act*. Bylaws and Master Deeds do not override New Jersey statutes.

Once a statute leaves the legislature, legislative intent of the statute is in the realm of the courts. The *Condominium Act* requires that binding votes be taken at meetings open to unit owners. The Court should confirm that the legislative intent of this requirement is to let unit owners hear the discussions and observe the decision-making process. Some condominium boards even allow public comments from unit owners before voting.

The defendant states, “If the Board were forced by law to bring every menial decision to a vote, it is sure that the Board would be stripped of all power, leading to inefficient operation...” But the law only requires “binding” votes to be taken at open meetings. If this requirement were as burdensome as the defendant contends, the legislature had an opportunity to fix it in the recent Radburn legislation. But the Radburn legislation, specifically 45:22A-46 4. a., repeats almost word for word the requirement for binding votes at open meetings from *Condominium Act* 46:8B-13 (a). This requirement is not an unreasonable burden to any condominium association.

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CONCLUSION

The issue of free speech at condominiums has already been settled in *Dublirer*. The Court need only apply the facts of this case (*Kardos vs. Fox Hills*) to the settled case law of *Dublirer* to find in the plaintiff's favor.

The issue of the board making binding decisions in secret meetings will only require the Court to apply the facts of this case to the text of the appropriate section in the *Condominium Act* (and Radburn legislation) to find in the plaintiff's favor.

For the foregoing reasons, the Court should not grant the defendant's Motion to Dismiss Plaintiff's Complaint.

Date: Nov. 8, 2018

By Paul Kardos
Paul Kardos