



MARC Z. EDELL

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Marc 7, 2019

VIA Hand Delivered

Clerk Superior Court of New Jersey
Morris County Courthouse
Washington & Court Streets
Morristown, New Jersey 07963-0910

RE: Paul Kardos v. Fox Hills at Rockaway Condominium Association, Inc.
Docket No.: MRS-C-000102-18

Dear Clerk:

I represent defendant Fox Hills at Rockaway Condominium Association, Inc. in connection the Counterclaim in the above-referenced matter.

I enclose for filing an original and two (2) copies of the following documents in opposition to Mr. Kardos' Notice of Motion to Dismiss the Counterclaim: 1. Letter Brief, 2. Certification of Marc Z. Edell and 3. Certification of Service.

Thank you for your kind attention to this matter.

Very truly yours,


Marc Z. Edell

cc: Paul Kardos, *Pro Se* (Via Electronic Mail and Regular Mail), George Karousatos, Esq. (Via Electronic Mail Only)

107 Fawnridge Drive, Long Valley, New Jersey 07853

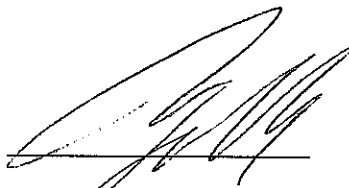
Marc Z. Edell, Esq.
N.J. Attorney ID. No. 018401975
107 Fawnridge Drive
Long Valley, New Jersey 07853
(908) 500-7801
Attorney for Defendant-Plaintiff on the Counterclaim
Fox Hills at Rockaway Condominium Association, Inc

<u>PAUL KARDOS</u>	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
Plaintiff,	:	DOCKET NO.: MRS-C-000102-18
	:	
-vs-	:	Civil Action
	:	
FOX HILLS AT ROCKAWAY	:	CERTIFICATION OF MARC Z. EDELL, ESQ.
CONDOMINIUM ASSOCIATION, INC.	:	
	:	
<u>Defendant.</u>	:	

I, Marc Z. Edell, being of full age hereby certify and state:

1. I am the Attorney representing the Defendant-Plaintiff on the Counterclaim, Fox Hills at Rockaway Condominium Association, Inc.
2. I annex hereto as Exhibit "A" a true and accurate copy of my client's First Amended Answer and Counterclaim filed in the above matter.

I certify that the statements made by me are true. I am aware that should any of these statements prove to be willfully false I am subject to punishment.



Marc Z. Edell, Esq.

Dated: March 7, 2019

George Karousatos, Esq./I.D.#027321991
BIANCAMANO & DI STEFANO, P.C.

Executive Plaza, Suite 300

10 Parsonage Road

Edison, NJ 08837

Tel: 732-549-0220

Fax: 732-549-0068

Attorneys for Defendant/Counterclaimant, *Fox Hills at
Rockaway Condominium Association, Inc.*

Our File No. 20016-02739

_____ :	SUPERIOR COURT OF NEW JERSEY
PAUL KARDOS :	CHANCERY DIVISION MORRIS COUNTY
:	GENERAL EQUITY
Plaintiff, :	DOCKET NO.: MRS-C-000102-18
:	
-vs- :	Civil Action
:	
FOX HILLS AT ROCKAWAY :	FIRST AMENDED ANSWER TO
CONDOMINIUM ASSOCIATION, INC. :	COMPLAINT, COUNTERCLAIM,
:	SEPARATE DEFENSES, JURY
Defendant. _____ :	DEMAND AND CERTIFICATIONS

The Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*, by way of Amended Answer to the Plaintiff's Complaint, says the following:

FIRST COUNT

1. Insofar as the allegations contained in Paragraphs 1 of this Count of the Complaint do not pertain to this Defendant, this Defendant makes no answers thereto. Insofar as the allegations contained in Paragraphs 1 of this Count of this Complaint pertain to this Defendant, same are denied.
2. Paragraph 2 asserts a contention of law and, as such, Defendant makes no response thereto. To the extent that Plaintiff(s) is asserting allegations of fact, same are denied.
3. Defendant admits that the Plaintiff submitted a flyer only.

4. Defendant admits that the Plaintiff's flyer was not acceptable to be posted, but denies that the only reasons for denying Plaintiff's request was based solely upon the quoted language contained in Paragraph 4 of Plaintiff's Complaint.
5. Defendant denies the allegation contained in Paragraph 5 of this Count of the Complaint.
6. Paragraph 6 asserts a contention of law and, as such, Defendant makes no response thereto. To the extent that Plaintiff(s) is asserting allegations of fact, same are denied.
7. Paragraph 7 asserts a contention of law and, as such, Defendant makes no response thereto. To the extent that Plaintiff(s) is asserting allegations of fact, same are denied.
8. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 8 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
9. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 9 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
10. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 10 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
11. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 11 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
12. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 12 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
13. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 13 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.
14. Defendant repeats and reiterates its answers to all of the previous allegations of the Complaint with full force and effect as though more fully set forth herein at length.

COUNT TWO

15. Paragraph 15 asserts a contention of law and, as such, Defendant makes no response thereto. To the extent that Plaintiff(s) is asserting allegations of fact, same are denied and the Condominium Act speaks for itself.

16. Defendant admits the allegations contained in Paragraph 16 of this Count of the Complaint.

17. Defendant admits the allegations contained in Paragraph 17 of this Count of the Complaint.

18. Defendant denies the allegation contained in Paragraph 18 of this Count of the Complaint.

19. Defendant denies the allegation contained in Paragraph 19 of this Count of the Complaint.

20. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 20 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.

21. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 21 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.

22. Defendant denies that the Plaintiff is entitled to the relief sought in Paragraph 22 of the Complaint and demands a dismissal of Plaintiff's Complaint, together with the costs of suit.

FIRST SEPARATE DEFENSE

This Court lacks jurisdiction over the subject matter of this action and this party reserves the right to move for dismissal of the pleading.

SECOND SEPARATE DEFENSE

The affirmative pleading herein fails to state a claim upon which relief may be granted and this party reserves the right to move at or before the time of trial to dismiss same.

THIRD SEPARATE DEFENSE

The claimant has failed to issue process within the time required by law and this party is entitled to a dismissal of this action.

FOURTH SEPARATE DEFENSE

The affirmative pleading fails to state a claim upon which relief can be granted, this court lacks jurisdiction over the subject matter of this action, and the claimant is barred from recovery as a matter of law because the alleged claim was not made and perfected in the manner and within the time provided and required by the law, statute, regulation or contract upon which it is predicated.

FIFTH SEPARATE DEFENSE

The applicable law, rule, statute or regulation, including but not limited to, the Statute of Limitations, controlling or requiring the institution of suit within a certain period of time following its accrual, was not complied with by the Plaintiff(s) and, accordingly, the Plaintiff(s)' claim is barred as a matter of law.

SIXTH SEPARATE DEFENSE

The Defendant asserts that any and all actions were made in accordance with accepted professional standards.

SEVENTH SEPARATE DEFENSE

The Defendants assert that there was no deviation from accepted professional standards.

EIGHTH SEPARATE DEFENSE

The Defendant did not breach any contractual obligation or warranties, express, implied or arising by operation of law.

NINTH SEPARATE DEFENSE

At all times relevant to the within litigation, the Defendant complied with the applicable laws, regulations and standards.

TENTH SEPARATE DEFENSE

The claim is barred by the entire controversy doctrine and the mandatory counterclaim rule.

ELEVENTH SEPARATE DEFENSE

There has been an accord and satisfaction whereby this party is discharged from any liability.

TWELFTH SEPARATE DEFENSE

The claimant is guilty of laches.

THIRTEENTH SEPARATE DEFENSE

Plaintiff executed a valid binding release by which Plaintiff has released this party of liability and waived the basis on which Plaintiff sues; and, as such, Plaintiff's Complaint violates the conditions of the prior settlement agreement and release he entered into between himself and Fox Hills at Rockaway Condominium Association, Inc. signed by Plaintiff on April 18, 2018 and modified on July 3, 2018, for the Morris County Chancery Court matter bearing Docket No.: C-130-17 and should therefore be dismissed in its entirety.

FOURTEENTH SEPARATE DEFENSE

The Plaintiff's claims are barred as a matter of law because of the Doctrine of Estoppel.

FIFTEENTH SEPARATE DEFENSE

The Defendant reserves the right to amend this Answer and to assert additional defenses.

COUNTERCLAIM

The Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*, by way of Counterclaim against the Plaintiff, Paul Kardos, says:

1. Plaintiff, Paul Kardos, entered into a Settlement Agreement and Release with Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*
2. In consideration for entering into this Settlement and Release Agreement, the Plaintiff and Defendant/Counterclaimant "unconditionally and irrevocably, remise, release, forever discharge and covenant not to sue one another. . . from any and all claims, counterclaims, actions, causes of actions, suits, set offs, costs, losses, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the Effective Date arising at law or in equity by right of action or otherwise, including but not limited to, facts that arose from or are related to the facts and circumstances giving rise to/or being part of the Litigation, the Complaint and/or the Counterclaim."
3. The Settlement and Release Agreement reached between the parties provides that the Agreement shall be construed as a whole according to its fair meaning and as if the parties jointly prepared it. Furthermore, it states that any uncertainty or ambiguity in the Agreement shall not be strictly interpreted or construed against any Party.
4. By filing the within lawsuit, the plaintiff, Paul Kardos, has breached the Settlement and Release Agreement, including, but not limited to, the terms and conditions of the Settlement and Release Agreement set forth in this Counterclaim.

5. By preparing the flyer that is attached to plaintiff's Complaint as Exhibit B, and by distributing that flyer and making it public record as an attachment to the Complaint, the plaintiff has breached the Settlement and Release Agreement, including, but not limited to, the terms and conditions of the Settlement and Release Agreement as set forth in this Counterclaim.

6. As a result of the plaintiff's, Paul Kardos' breach of the Settlement and Release Agreement, the Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*, has been damaged and otherwise harmed.

WHEREFORE, Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*, demands judgment against plaintiff, Paul Kardos, for damages, attorney's fees, costs of suit and such other relief as this Court deems appropriate and equitable.

DESIGNATION OF TRIAL COUNSEL

PLEASE TAKE NOTICE that, pursuant to Rule 4:25-4, **GEORGE KAROUSATOS, ESQ.**, is hereby designated as Trial Counsel in the within matter.

DEMAND FOR STATEMENT OF DAMAGES

PLEASE TAKE NOTICE that, pursuant to Rule 4:5-2, the parties filing this Answer require that you, within five (5) days, furnish it with a Statement of Damages claimed.

DEMAND FOR TRIAL BY JURY

PLEASE TAKE NOTICE that the defendant/counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*, hereby demands a trial of the issues by a jury of six.

BIANCAMANO & DI STEFANO, P.C.
Attorneys for Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*

By: _____


GEORGE KAROUSATOS, ESQ.

Dated: February 11, 2019

CERTIFICATION

I hereby certify that a copy of the within document has been filed with the Clerk of the above-captioned Court and that a copy of same was served upon all interested attorneys within the time allowed by the Rules of Court, as extended.

BIANCAMANO & DI STEFANO, P.C.
Attorneys for Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*

Dated: February 11, 2019

By: 
GEORGE KAROUSATOS, ESQ.

CERTIFICATION PURSUANT TO RULE 4:5-1

-
1. The matter in controversy is the subject of a pending action or Arbitration as follows: UNKNOWN
2. Contemplation of another action or arbitration proceeding is contemplated as follows: UNKNOWN
3. The following parties listed should be joined in this action: UNKNOWN


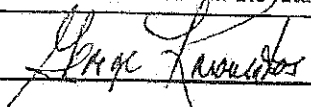
I CERTIFY THAT the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

BIANCAMANO & DI STEFANO, P.C.
Attorneys for Defendant/Counterclaimant, *Fox Hills at Rockaway Condominium Association, Inc.*

Dated: February 11, 2019

By: 
GEORGE KAROUSATOS, ESQ.

Appendix XII-B1

	CIVIL CASE INFORMATION STATEMENT (CIS)		FOR USE BY CLERK'S OFFICE ONLY	
	Use for Initial Law Division Civil Part pleadings (not motions) under <i>Rule</i> 4:5-1 Pleading will be rejected for filing, under <i>Rule</i> 1:5-6(c), if information above the black bar is not completed or attorney's signature is not affixed		PAYMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK NO. _____	
			AMOUNT: _____	
			OVERPAYMENT: _____	
			BATCH NUMBER: _____	
ATTORNEY / PRO SE NAME George Karousatos, Esq.			TELEPHONE NUMBER (732) 549-0220	
COUNTY OF VENUE Morris				
FIRM NAME (if applicable) Biancamano & Di Stefano, P.C.			DOCKET NUMBER (when available) MRS-C-000102-18	
OFFICE ADDRESS 10 Parsonage Road, Suite 300 Edison, NJ 08837			DOCUMENT TYPE 1st Am Answer & Counterclaim	
			JURY DEMAND <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	
NAME OF PARTY (e.g., John Doe, Plaintiff) Fox Hills at Rockaway Condominium Association, Inc., Defendant		CAPTION Paul Kardos v. Fox Hills at Rockaway Condominium Association, Inc.		
CASE TYPE NUMBER (See reverse side for listing) 599	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A-27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) Travelers <input type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input checked="" type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> YES <input type="checkbox"/> NO				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION <div style="height: 100px; border: 1px solid black; margin-top: 10px;"></div>				
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule</i> 1:38-7(b).				
ATTORNEY SIGNATURE: 				



CIVIL CASE INFORMATION STATEMENT (CIS)

Use for initial pleadings (not motions) under Rule 4:5-1

CASE TYPES (Choose one and enter number of case type in appropriate space on the reverse side.)

Track I - 150 days' discovery

- 151 NAME CHANGE
- 175 FORFEITURE
- 302 TENANCY
- 399 REAL PROPERTY (other than Tenancy, Contract, Condemnation, Complex Commercial or Construction)
- 502 BOOK ACCOUNT (debt collection matters only)
- 505 OTHER INSURANCE CLAIM (including declaratory judgment actions)
- 506 PIP COVERAGE
- 510 UM or UIM CLAIM (coverage issues only)
- 511 ACTION ON NEGOTIABLE INSTRUMENT
- 512 LEMON LAW
- 801 SUMMARY ACTION
- 802 OPEN PUBLIC RECORDS ACT (summary action)
- 999 OTHER (briefly describe nature of action)

Track II - 300 days' discovery

- 305 CONSTRUCTION
- 509 EMPLOYMENT (other than CEPA or LAD)
- 599 CONTRACT/COMMERCIAL TRANSACTION
- 603N AUTO NEGLIGENCE - PERSONAL INJURY (non-verbal threshold)
- 603Y AUTO NEGLIGENCE - PERSONAL INJURY (verbal threshold)
- 605 PERSONAL INJURY
- 610 AUTO NEGLIGENCE - PROPERTY DAMAGE
- 621 UM or UIM CLAIM (includes bodily injury)
- 699 TORT - OTHER

Track III - 450 days' discovery

- 005 CIVIL RIGHTS
- 301 CONDEMNATION
- 602 ASSAULT AND BATTERY
- 604 MEDICAL MALPRACTICE
- 606 PRODUCT LIABILITY
- 607 PROFESSIONAL MALPRACTICE
- 608 TOXIC TORT
- 609 DEFAMATION
- 616 WHISTLEBLOWER / CONSCIENTIOUS EMPLOYEE PROTECTION ACT (CEPA) CASES
- 617 INVERSE CONDEMNATION
- 618 LAW AGAINST DISCRIMINATION (LAD) CASES

Track IV - Active Case Management by Individual Judge / 450 days' discovery

- 156 ENVIRONMENTAL/ENVIRONMENTAL COVERAGE LITIGATION
- 303 MT. LAUREL
- 508 COMPLEX COMMERCIAL
- 513 COMPLEX CONSTRUCTION
- 514 INSURANCE FRAUD
- 620 FALSE CLAIMS ACT
- 701 ACTIONS IN LIEU OF PREROGATIVE WRITS

Multicounty Litigation (Track IV)

- | | |
|---|---|
| 271 ACCUTANE/ISOTRETINOIN | 296 STRYKER REJUVENATE/ABG II MODULAR HIP STEM COMPONENTS |
| 274 RISPERDAL/SEROQUEL/ZYPREXA | 297 MIRENA CONTRACEPTIVE DEVICE |
| 281 BRISTOL-MYERS SQUIBB ENVIRONMENTAL | 299 OLMESARTAN MEDOXOMIL MEDICATIONS/BENICAR |
| 282 FOSAMAX | 300 TALC-BASED BODY POWDERS |
| 285 STRYKER TRIDENT HIP IMPLANTS | 601 ASBESTOS |
| 286 LEVAQUIN | 623 PROPECIA |
| 287 YAZ/YASMIN/OCELLA | 624 STRYKER LFIT CoCr V40 FEMORAL HEADS |
| 289 REGLAN | 625 FIREFIGHTER HEARING LOSS LITIGATION |
| 291 PELVIC MESH/GYNECARE | 626 ABILIFY |
| 292 PELVIC MESH/BARD | 627 PHYSIOMESH FLEXIBLE COMPOSITE MESH |
| 293 DEPUY ASR HIP IMPLANT LITIGATION | 628 TAXOTERE/DOCETAXEL |
| 295 ALLODERM REGENERATIVE TISSUE MATRIX | 629 ZOSTAVAX |

If you believe this case requires a track other than that provided above, please indicate the reason on Side 1, in the space under "Case Characteristics."

Please check off each applicable category

☐

Putative Class Action

☐

Title 59

Marc Z. Edell, Esq.
N.J. Attorney ID. No. 018401975
107 Fawnridge Drive
Long Valley, New Jersey 07853
(908) 500-7801
Attorney on the Counterclaim for Defendant
Fox Hills at Rockaway Condominium Association, Inc

<hr/>	:	SUPERIOR COURT OF NEW JERSEY
PAUL KARDOS	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
	:	DOCKET NO.: MRS-C-000102-18
Plaintiff,	:	
	:	
-vs-	:	Civil Action
	:	
FOX HILLS AT ROCKAWAY	:	
CONDOMINIUM ASSOCIATION, INC.	:	
	:	
Defendant.	:	
<hr/>		

**BRIEF IN OPPOSITION TO PLAINTIFF, PAUL KARDOS', MOTION OF TO DISMISS
DEFENDANT'S COUNTERCLAIM FOR FAILURE TO STATE A CAUSE OF ACTION
UPON WHICH RELIEF MAY BE GRANTED¹**

On the Brief: Marc Z. Edell, Esq.

¹ Although in the Caption of Plaintiff's Motion to Dismiss the Counterclaim fails to state Rule upon which the Motion is Premised, in the "CONCLUSION" of his brief in support of the motion he states, "For the foregoing reasons, the Court should dismiss the defendant's Counterclaim with prejudice for failure to state a claim which relief can be granted." [Emphasis Added]

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TABLE OF AUTHORITIES

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<u>Coyle v. Englander's,</u> 199 N.J. Super. 212 (App. Div.1985).....	6
<u>Great Atlantic & Pacific Tea v. Checchio,</u> 335 N.J. Super. 495 (App. Div. 2000).	3

² Plaintiff-Defendant on the Counterclaim submitted a Certification supporting his reasons that the Counterclaim of Fox Hills should be dismissed. The Certification contains 13 numbered paragraphs. In 7 of those paragraphs, attaches and refers documents and evidence which were not part of the Counterclaim and were not attached as part of the Counterclaim.

<u>Hoffman v. Hampshire Labs Inc.,</u> 405 N.J. Super. 105 (App. Div. 2009)	2, 5
<u>Lederman v. Prudential Life Insurance,</u> 385 N.J. Super. 324 (App. Div. 2006)	2
<u>LVNV Funding, LLC v. Colvell,</u> 421 N.J. Super. 1 (App. Div. 2011).	3
<u>Nolan v. Lee Ho,</u> 120 N.J. 465 (1990)	6
<u>Pascarella v. Bruck,</u> 190 N.J. Super. 188 (App. Div. 1983)	6
<u>Printing Mart-Morristown v. Sharp Electronics,</u> 116 N.J. 739 (1989).....	4
<u>Royal v. Guardian Life Insurance Company of America,</u> 142 N.J. 520 (1995).....	3
<u>Salomon v. Eli Lilly & Co.,</u> 98 N.J. 58 (1984)	3
<u>Velantzis v. Colgate Palmolive Co.,</u> 109 N.J. 237 (1988)	3

INTRODUCTION

Plaintiff, Paul Kardos, has filed a Motion to Dismiss the Counterclaim for Failure to State a Cause of Action Upon which Relief Can be Granted asserted against him by Fox Hills at Rockaway Condominium Association, Inc. (hereafter referred to as "Fox Hills).

Plaintiff's Complaint sets forth two primary causes of action against the defendant. Count One of the Complaint pertains to a flyer that the plaintiff prepared pertaining to prior litigation between the plaintiff and defendant. Count Two of the Complaint asserts a cause of action against the Association for allegedly improperly raising the speed limit from 15 mph to 25 mph. It should be noted that as a result of procedural defects in the adopting the 25-mph speed limit the current speed limit is the original 15 mph and, therefore, that issue raised in Count Two of the plaintiff's Complaint is no longer an issue and should be considered moot.

The Amended Answer of Defendant, Fox Hills, includes a Counterclaim. The Counterclaim was based on the Settlement Agreement and Release entered between Plaintiff and Defendant resolving claims of both parties in in the prior litigation. The Counterclaim sets forth the fact that a Settlement Agreement and Release was entered into and the facts basis for Fox Hills claims that Paul Kardos breached the Settlement Agreement and Release. The breach of the Settlement Agreement and Release by Paul Kardos is asserted to be the result of the filing of this lawsuit, and by plaintiff preparing a flyer about the prior lawsuit, distributing that flyer and making it public record by attaching it to the Complaint. In this regard, Fox Hills has set forth a valid cause of action. Plaintiff now challenges this cause of action improperly and without basis by filing a Notice to Dismiss the Counterclaim.

LEGAL ARGUMENT

Point I

Plaintiff's Motion to Dismiss Defendant's Counterclaim for Failure to State A Cause of Action Upon Which Relief May Be Granted, improperly included Matters Outside of the Pleading, including Documents, Certifications and alleged Statements by Others, all of which Should be Excluded by the Court

In support of Plaintiff's Motion to Dismiss, plaintiff provides a Certification supporting his reasons that the Counterclaim of Fox Hills should be dismissed. Plaintiff's Certification contains 13 numbered paragraphs. In 7 of those paragraphs, plaintiff relies on documents and evidence which were not part of the Counterclaim and were not attached as part of the Counterclaim. Our Court Rules regarding Motions to Dismiss for Failure to State a Cause of Action Upon Which Relief May Be Granted make clear that "if matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion." This also requires Plaintiff to comply with the requirements of R.4:46-2(a):

including submission of a separate statement of material facts with or without supporting affidavits. The statement of material facts shall set forth in separately numbered paragraphs a concise statement of each material fact as to which the movant contends there is no genuine issue together with a citation to the portion of the motion record establishing the fact or demonstrating that it is uncontroverted. The citation shall identify the document and shall specify the pages and paragraphs or lines thereof or the specific portions of exhibits relied on.

See Lederman v. Prudential Life Insurance, 385 N.J. Super. 324, 337 (App. Div.) cert denied, 188 N.J. 353 (2006); Hoffman v. Hampshire Labs Inc., 405 N.J. Super. 105, 112 (App. Div. 2009).

Since it is widely recognized that a Court should not grant Summary Judgment when the matter is not yet “ripe” for such consideration, such as when discovery has not been completed. Velantzis v. Colgate Palmolive Co., 109 N.J. 237 (1988), Salomon v. Eli Lilly & Co., 98 N.J. 58 (1984). In this case, discovery is not just incomplete, it has not yet even begun. The parties have not even answered Interrogatories in this case. No depositions have been conducted of the parties. No document production has been made or Request for Admissions propounded let alone responded to. No depositions of witnesses have been conducted. Other than the filing of the Complaint, Answer with Counterclaim and Answer to the Counterclaim, discovery has not even begun to proceed. In fact, the initial conference with the Court to set forth a discovery schedule is presently scheduled for the day before the return date of this Motion, March 14, 2019.

It is well settled that on a substantive motion to dismiss a party’s claim, such as on Summary Judgment, the Judge must determine whether a genuine issue of material fact exists. Royal v. Guardian Life Insurance Company of America, 142 N.J. 520 (1995). Furthermore, in denying or granting such a Motion, the Court Rules expressly require the Court to detail its reasons in an oral or written opinion in accordance with the requirements. Great Atlantic & Pacific Tea v. Checchio, 335 N.J. Super. 495, 498 (App. Div. 2000). This requires the trial judge to set forth factual findings and correlate them to legal conclusions. LVNV Funding, LLC v. Colvell, 421 N.J. Super. 1, 5 (App. Div. 2011). In light of the fact that no discovery has been conducted and, therefore, no facts have been established under oath by any party, it is impossible for the Court to decide this Motion finding what genuine issue of material facts either

exist or do not exist, detailing its reasons on the record and correlating those factual findings of the Court to legal conclusions. The Court cannot establish any factual findings, as no discovery has been conducted and, therefore, there are no facts before the Court under oath for the Court to consider.

Point II

Should the Court Decide to Exclude the Numerous Submissions made by Defendant Counterclaimant³ Outside the Pleading and consider Plaintiff's Motion to Dismiss the Counterclaim for Failure to State a Cause of Action, the Motion Should be Denied.

STANDARD OF REVIEW

The standard under which motions made with respect to R.4:6-3 is indisputable. The Court must evaluate the adequacy of the pleading by determining whether a cause of action is suggested by the facts. Printing Mart-Morristown v. Sharp Electronics, 116 N.J. 739 at 746, 15 (1989). The primary focus is upon the legal sufficiency of the facts alleged on the face of the complaint. The examination of a complaint's allegation of fact is one that is at painstaking and undertaken with a generous and hospitable approach. *Id.* at 746.

For purposes of this motion to dismiss, the Court must accept as true the facts alleged in the Counterclaim and determine the motion based on the pleadings alone, or documents referred to in the pleadings which the Court is also at liberty to review. Finally, these motions should be granted only with caution and in the rarest of circumstances. Ballinger v. Delaware River Port

³ Plaintiff-Defendant on the Counterclaim submitted a Certification supporting his reasons that the Counterclaim of Fox Hills should be dismissed. The Certification contains 13 numbered paragraphs. In 7 of those paragraphs, attaches and refers documents and evidence which were not part of the Counterclaim and were not attached as part of the Counterclaim. R.4:6-2 provides that: "If, on a motion to dismiss based on the defense numbered (e) [failure to state a claim upon which relief can be granted] matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided by R. 4:46, and all parties shall be given reasonable notice of the court's intention to treat the motion as one for summary judgment and a reasonable opportunity to present all material pertinent to such a motion."

Authority, 311 Super. 317 at 322, 12 (App. Div. 1998).

Even in cases where a Court concludes that the Complaint (or Counterclaim) fails to State a Cause of Action upon which Relief May be Granted, the dismissal is ordinarily without prejudice. The Court has the discretion to permit the Claimant to amend the its pleading to allege additional facts to state a cause of action. Hoffman v. Hampshire Labs, 25 405 N.J. Super. 105 at 116, (App. Div. 2009).

FACTUAL and LEGAL ARGUMENT

In its Counterclaim, Fox Hills states that it and Paul Kardos entered into a Settlement and Release Agreement (hereinafter “the Agreement”. In consideration for entering into the Settlement and Release Agreement, the “Agreement” provided *inter alia* a Mutual Release of the Association and Plaintiff:

“unconditionally and irrevocably, remise [relinquish], release, forever discharge and covenant not to sue one another. . .from any and all claims, counterclaims, actions, causes of action, suits, set offs, costs, lawsuits, expenses, sums of money, accounts, reckonings, debts, charges, complaints, controversies, disputes, damages, judgments, executions, promises, omissions, duties, agreements, rights, and any and all demands, obligations and liabilities of whatever kind or character, direct or indirect, whether known or unknown or capable of being known up until the Effective Date, arising at law or in equity by right of action or otherwise, including but not limited to, facts that arose from or are related to the facts and circumstances giving rise to/or being part of the Initial Litigation, the Complaint and/or the Counterclaim.” See Exhibit A, pg. 6, para. 2.

Paragraphs numbered 4 and 5 of the Counterclaim then go on to detail how the plaintiff breached the Agreement by filing this lawsuit and by preparing a flyer regarding the lawsuit and making it public record. See. Exhibit A annexed to Certification of Marc Z. Edell, Esq. dated March 7, 2019 (hereinafter “Exhibit A”) pgs. 6 and 7, para. 4 & 5.

Paragraph number 6 of the Counterclaim asserts that plaintiff, Paul Kardos, breached the Agreement. See Exhibit A, pg. 7, para. 6. The Counterclaim then goes on to request damages for this breach of this Agreement. As such, the defendant, Fox Hills, has set forth the *prima facie* elements of breach of an agreement by Paul Kardos. Coyle v. Englander's, 199 N.J. Super. 212, 223 (App. Div. 1985).

It is well settled New Jersey law that settlements, including the releases that accompany the settlement, are looked upon favorably by our judicial system. It has long been held that there is a strong public policy favoring the enforcement of settlement agreements. Nolan v. Lee Ho, 120 N.J. 465 (1990). It is also well settled that a settlement agreement, like other contracts, is freely entered into and which a Court should honor and enforce as it does other contracts.⁴ Pascarella v. Bruck, 190 N.J. Super. 188, 124 (App. Div. 1983), cert. denied 94 N.J. 600 (1983).

The Settlement Agreement referenced herein resulted in a resolution of all claims and causes of action raised by Plaintiff and Defendant in the underlying litigation filed in the Superior Court of New Jersey, Morris County, Chancery Division, bearing Docket No. C-130-17.

Fox Hills has asserted that the Plaintiff has breached the terms of that Settlement Agreement and that it has pled the *prima facie* elements of a breach of this agreement. In part, that Settlement Agreement provides that it constitutes a full and complete and release by Paul Kardos of "any and all claims. . . costs, losses, expenses, . . . accounts, reckonings, . . . charges, complaints, controversies, disputes. . . omissions, duties, agreements, rights, and any and all

⁴ Paragraph of the Agreement: 10. Knowing and Voluntary Assent. The Parties acknowledge that the Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of, any of them. The Parties further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, the Agreement by counsel of their choice and that they have read the Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents hereof and the contents' legal effect.

demands, obligations and liabilities of whatever kind or character, direct or indirect, . . . including but not limited to facts that arose from or are related to the facts and circumstances giving rise to and/or being part of the Litigation, the Complaint, and/or the Counterclaim.”

In entering into this binding contract of the Settlement Agreement, Paul Kardos relinquished any rights of whatever kind or character, he would otherwise have: (1) to make claims, charges, complaints of any kind; (2) to attempt to create controversies and disputes; (3) to demand information and answers to questions; and (4) to assert that the Board or the Association violated its duties and obligations. However, Paul Kardos’ allegations, primarily with respect to Count One of his Complaint, directly or indirectly, relate to facts that arose from or are related to the facts and circumstances giving rise to and or being part of the Litigation, the Complaint and/or the Counterclaim. Paul Kardos’ flyer and this lawsuit based relating to the flyer, (1) makes claims and charges, (2) creates controversies and disputes, (3) demands information and answers to questions and (4) asserts the Board and/or Association and its attorney violated its duties and obligations. All these claims and charges relate, directly or indirectly, to facts that arose from or are related to the facts and circumstances giving rise to and/or being part of the Litigation, the Complaint and/or the Counterclaim.

As a result, Plaintiff’s flyer, as well as the filing of this lawsuit over the flyer as set forth in Count One of Plaintiff’s Complaint, violates the Settlement Agreement and is, therefore, a breach of the Agreement entitling the Association to damages.

It should be noted that Paragraph 5 of the Settlement Agreement preserves the parties right with respect to “claims arising out of the failure of any Party to perform in conformity with the terms of the Agreement.” This provision is obviously inapplicable as to Plaintiff’s claims in Count One of the Complaint, for it is he who has failed to perform in conformity with the terms

of the Agreement, and as a consequence the Defendant Association not only entitled it was required to file its Counterclaim for Plaintiff's failure to perform in conformity with the terms of the Agreement resulting in damages to the Association. The only other right preserved in the Settlement Agreement, Paragraph 5, pertains to "any future disputes between owner and/or the Association with respect to their condominium/owner relationship." This is obviously intended to refer to disputes unrelated to the present dispute.

As such, the under the Settlement Agreement, Plaintiff has relinquished any and all rights he might otherwise have had to Post the Flyer at issue and to bring this case claiming that Defendant's refusal to grant his request failed to act in conformity of the terms of the Settlement Agreement.

CONCLUSION

For all the foregoing reasons, the Court should deny the plaintiff's Motion to Dismiss the Counterclaim.

Respectfully submitted,

By: 

Marc Edell, Esq.

Attorney for Defendant, Fox Hills at
Rockaway Condominium

Association Inc. on the Counterclaim

REQUEST FOR ORAL ARGUMENT

Defendant Respectfully Requests Oral Argument on Plaintiff's Motion to Dismiss.

By: 

Marc Edell, Esq.

Attorney for Defendant, Fox Hills at
Rockaway Condominium

Association Inc. on the Counterclaim

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Attorney for Defendant-Plaintiff on the Counterclaim
Fox Hills at Rockaway Condominium Association, Inc.

<u>PAUL KARDOS</u>	:	SUPERIOR COURT OF NEW JERSEY
	:	CHANCERY DIVISION MORRIS COUNTY
	:	GENERAL EQUITY
Plaintiff,	:	DOCKET NO.: MRS-C-000102-18
	:	
-vs-	:	Civil Action
	:	
FOX HILLS AT ROCKAWAY	:	CERTIFICATION OF SERVICE
CONDOMINIUM ASSOCIATION, INC.	:	
	:	
<u>Defendant.</u>	:	

I, Marc Z. Edell, being of full age hereby certify and state:

1. I am the Attorney representing the Defendant-Plaintiff on the Counterclaim, Fox Hills at Rockaway Condominium Association
2. On this date, I caused an original and two copies of the following documents to be hand delivered to the Clerk, Superior Court of New Jersey - Morris County, Washington and Court Streets, Morristown, New Jersey 07963: (1) Brief in Opposition to Plaintiff's Motion to Dismiss Defendant's Counterclaim; (2) Certification of Marc Z. Edell, Esq. w/ Exhibit A; and (3) Certification of Service.
3. On this date, I caused a copy of the above-mentioned documents be delivered via electronic mail and to: Paul Kardos, *Pro Se* and George Karousatos, Esq.

I certify that the statements made by me are true. I am aware that should any of these statements prove to be willfully false I am subject to punishment.



Marc Z. Edell, Esq.

Dated: March 7, 2019