

PREPARED BY THE COURT

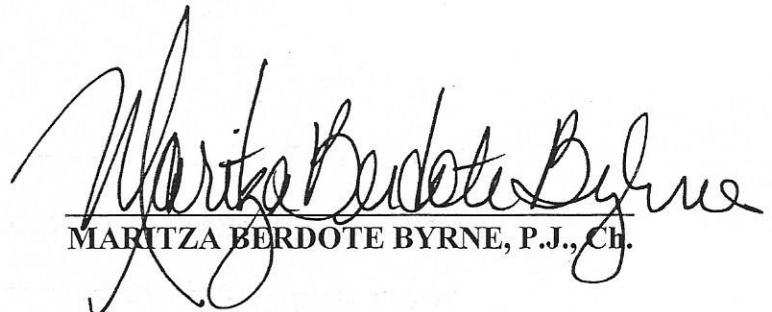
PAUL KARDOS,	:	SUPERIOR COURT OF NEW JERSEY	
	:	CHANCERY DIVISION	
	:	MORRIS COUNTY	
	:		
Plaintiff,	:		
	:	DOCKET NO. C-102-18	
v.	:		
	:		
FOX HILLS AT ROCKAWAY	:		
CONDOMINIUM	:	CIVIL ACTION	
ASSOCIATION, INC.,	:		
	:		
Defendant.	:	ORDER	
	:		

**FILED**  
MAY 03 2019  
Maritza Berdote Byrne, P.J.Ch.

THIS MATTER having been opened to the court by way of motion filed by Paul Kardos, plaintiff, and opposition having been filed by George Karousatos, Esq., counsel for defendant, and the court having read and considered the pleadings filed, and for good cause shown;

IT IS ON THIS 3<sup>rd</sup> DAY OF MAY 2019 ORDERED as follows:

1. Plaintiff's motion for leave to file an Amended Complaint is **GRANTED**.
2. Plaintiff shall file an Amended Complaint within 15 days of receipt of this Order and Statement of Reasons. Defendant shall have 30 days from the date of filing of plaintiff's Amended Complaint to file an Amended Answer.

  
MARITZA BERDOTE BYRNE, P.J., Ch.

**Paul Kardos v. Fox Hills at Rockaway Condominium Association, Inc.**

**MRS-C-102-18**

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**STATEMENT OF REASONS**

This matter began on September 20, 2018, with the filing of a complaint by plaintiff Paul Kardos (“plaintiff”). Plaintiff alleges Defendant, Fox Hills at Rockaway Condominium Association, Inc. (“defendant”), has violated his Right to Free Speech as guaranteed by the New Jersey Constitution. Complaint ¶¶ 1-13. Plaintiff further alleges defendant has violated the New Jersey Condominium Act, in particular N.J.S.A. 46:8B-13(a). Id. ¶¶ 14-22. Through the present motion, plaintiff seeks to amend his Complaint to add allegations related to actions allegedly taken by defendant’s governing board after his initial Complaint was filed. Defendant has filed opposition to plaintiff’s motion.

One allegation made in plaintiff’s original Complaint is defendant changed the speed limit in plaintiff’s condominium association without conducting a meeting as required by N.J.S.A. 46:8B-13(a). Complaint ¶¶ 14-22. Plaintiff’s Amended Complaint alleges defendant changed the speed limit back to its original speed, again without holding a meeting. Amended Complaint ¶¶ 18.01-18.03. Plaintiff’s Amended Complaint also alleges decisions related to a bid proposal and the location of ticket sales were made by defendant without conducting a meeting as required by N.J.S.A. 46:8B-13(a). Amended Complaint ¶¶ 18.04-18.09.

Under R. 4:9-1, a party may amend a pleading “as a matter of course at any time before a responsive pleading is served . . . . Thereafter a party may amend a pleading only by written consent of the adverse party or by leave of court which shall be freely given in the interest of justice.” While leave to amend a Complaint should be freely granted, the court still may exercise discretion and deny a request to amend a pleading. Notte v. Merchs. Mut. Ins. Co., 185 N.J. 490, 501 (2006).

“That exercise of discretion requires a two-step process: whether the non-moving party will be prejudiced, and whether granting the amendment would nonetheless be futile.” Id. “Objection to the filing of an amended complaint on the ground that it fails to state a cause of action should be determined by the same standard applicable to a motion to dismiss under R. 4:6-2(e).” Interchange State Bank v. Rinaldi, 303 N.J. Super. 239, 257 (App. Div. 1997).

Defendant first argues facts alleged by plaintiff in the Amended Complaint do not support a cause of action and fail as a matter of law. The court is required to use the motion to dismiss under R. 4:6-2(e) standard to evaluate this argument. In considering a motion to dismiss under R. 4:6-2(e), the court must apply the test set forth in Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 771-72 (1989). “[O]ur inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint.” Printing Mart, 116 N.J. at 746. The test is essentially, “whether a cause of action is ‘suggested’ by the facts.” Id. A “reviewing court searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary.” Id. “[P]laintiffs are entitled to every reasonable inference of fact.” Id. “The examination of a complaint’s allegations of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach.” Id.

Defendant asserts its decision related to the location of ticket sales was a trivial decision and a meeting pursuant to N.J.S.A. 46:8B-13(a) was not required to make this decision. Plaintiff notes N.J.S.A. 46:8B-13(a) does not include a meeting exception for “trivial” decisions. Plaintiff asserts if defendant does not wish to be burdened by the need to call meetings for trivial decisions, then trivial decisions should be referred to defendant’s community manager, not defendant’s governing board. Reply Brief p. 2.



The pertinent part of New Jersey's Condominium Act states "If the bylaws provide that any of the powers and duties of the association as set forth in [N.J.S.A. 46:8B-14 and N.J.S.A. 46:8B-15] be exercised through a governing board elected by the membership of the association, or through officers of the association responsible to and under the direction of such a governing board, all meetings of that governing board, except conference or working sessions at which no binding votes are to be taken, shall be open to attendance by all unit owners, and adequate notice of any such meeting shall be given to all unit owners in such manner as the bylaws shall prescribe [.]" N.J.S.A. 46:8B-13(a). Defendant's bylaws do provide its governing board with the authority to exercise powers and duties "as set forth in [N.J.S.A. 46:8B-14 and N.J.S.A. 46:8B-15]" and accordingly, defendant's board of directors is required to make open all meetings of the governing board "except conference or working sessions at which no binding votes are to be taken [.]" *Id.*

N.J.S.A. 46:8B-13(a) does not provide an exception for trivial decisions. An exception is provided for "conference or working sessions" and for meetings "dealing with (1) any matter the disclosure of which would constitute an unwarranted invasion of individual privacy; (2) any pending or anticipated litigation or contract negotiations; (3) any matters falling within the attorney-client privilege, to the extent that confidentiality is required in order for the attorney to exercise his ethical duties as a lawyer; or (4) any matter involving the employment, promotion, discipline or dismissal of a specific officer or employee of the association." *Id.* No other exceptions are recognized.

Defendant's governing board's decision to change the location of ticket sales, and other alleged decisions made without a meeting, do not clearly fit into an exception above. Plaintiff argues New Jersey did not intend to require all decisions, especially trivial ones such as the location of ticket sales, to be made at open meetings. The language of the statute suggests otherwise and

requires “all meetings” of the governing board to be noticed and made open to an association’s residents, other than those exceptions previously listed. N.J.S.A. 46:8B-13(a). If the decisions listed in plaintiff’s Amended Complaint were made at a board meeting, as alleged, and those board meetings were not made open to the public, as alleged, then plaintiff’s Amended Complaint does sufficiently allege facts supporting a cause of action for violation of N.J.S.A. 46:8B-13(a).

Defendant also argues the additional facts alleged in plaintiff’s Amended Complaint are futile because they are not raised in support of any new cause of action and are, ultimately, unnecessary. The court disagrees. The additional facts alleged by plaintiff in his Amended Complaint provide further support to plaintiff’s cause of action alleging violation of N.J.S.A. 46:8B-13(a). It is true plaintiff’s Amended Complaint merely alleges additional violations of N.J.S.A. 46:8B-13(a), but these additional violations, as alleged, continue to provide support for plaintiff’s cause of action.

Defendant next argues a settlement agreement entered into by the parties, effective April 25, 2018 (the “Settlement Agreement”) bars some of the allegations in Plaintiff’s Amended Complaint. However, the Settlement Agreement states it does not apply to future disputes and applies to bar claims “known or unknown or capable of being known up until the effective date [.]” Opposition ex. A.

Defendant seizes on the fact one date, prior to the effective date of the Settlement Agreement, is referenced in plaintiff’s Amended Complaint. However, plaintiff’s Amended Complaint does not allege any cause of action arose prior to the effective date of the Settlement Agreement. The one date seized upon by plaintiff simply notes a meeting of defendant’s governing board was held on April 2, 2018. Amended Complaint ¶ 17. The facts supporting plaintiff’s causes of action are all alleged to have occurred subsequent to the effective date of the Settlement

Agreement. The Settlement Agreement served to settle a prior litigation between the parties. Defendant has not demonstrated how the Settlement Agreement applies to the present action.

In addition to arguing plaintiff's Amended Complaint is futile, defendant also alleges plaintiff's Amended Complaint would prejudice defendant. Defendant claims paper discovery in this matter is nearly complete and the parties are almost ready to start depositions. Defendant argues allowing plaintiff to amend his Complaint would reopen paper discovery and any further delay would unduly prejudice defendant. Defendant also argues the court should not be burdened with the "petty" disputes alleged by plaintiff.

Plaintiff claims defendant's assertions that paper discovery is nearly complete are disingenuous and notes one of the allegations in his Amended Complaint relates to a \$110,000 contract awarded by defendant's governing board — an amount of money most people would not consider "petty".

The court notes, in regards to defendant's arguments of prejudice, that no trial date has been set in this matter and no initial case management conference has been conducted due to adjournments requested by defendant. No Case Management Order has been issued since no case management conference has been conducted.

Defendant's claims of prejudice are unfounded. No trial date has been set in this matter. No deadlines for discovery have been issued. Additionally, the allegations in plaintiff's Amended Complaint do not assert a new cause of action and should not require voluminous paper discovery. Defendant is not prejudiced by whatever additional discovery defendant's Amended Complaint will require.

Further, while some of the allegations in plaintiff's Amended Complaint are not of great significance (e.g. where tickets are sold), the overarching issue in plaintiff's Amended Complaint



is how defendant's governing board conducts itself in accordance with the requirements of New Jersey's Condominium Act. This is not a petty issue. This is an issue capable of affecting the everyday life of plaintiff and other residents of defendant. Defendant's claims of prejudice do not present grounds to bar plaintiff's Amended Complaint.

Defendant's final argument in opposition to plaintiff's Amended Complaint is the filing of an Amended Complaint would violate the equitable doctrine of unclean hands. Defendant's unclean hands argument does not relate to any aspect of plaintiff's Amended Complaint. Instead, defendant's unclean hands argument relates to Count One of plaintiff's original Complaint, a Count plaintiff does not seek to amend through the present motion. Defendant's unclean hands argument is misplaced, as it does not relate to any new allegations contained in plaintiff's Amended Complaint. The doctrine of unclean hands does not present grounds to deny plaintiff's motion to amend.

Plaintiff's Amended Complaint sufficiently alleges new facts in support of one of his original causes of action. These new facts are not futilely plead. Additionally, no trial date or discovery dates have been set, accordingly, allowing plaintiff to amend his Complaint will not prejudice defendant. This is particularly true given plaintiff's Amended Complaint does not allege a new cause of action. Finally, defendant's unclean hands argument does not relate to any new allegations raised in the Amended Complaint and is misplaced. Plaintiff's motion for leave to amend is **GRANTED**. Plaintiff shall file an Amended Complaint within 15 days of receipt of this Order and Statement of Reasons. Defendant shall have 30 days from the date of service of plaintiff's Amended Complaint to file an Amended Answer.