

August 3, 2020
204 Cleveland Lane
Rockaway, NJ 07866
PKardos1@yahoo.com

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
Cover Letter – Reply Brief

Dear Sir or Madam:

I am the *pro se* plaintiff in the above matter. Via JEDS please find:

- Brief in Reply To Defendants Opposition To Motion For Leave To Amend Complaint

Please print and forward this to the Honorable Judge Berdote-Byrne.

Thank you for your courtesy and cooperation in this matter.

Very truly yours,



Paul Kardos
973-527-1433

Copy (via email and USPS regular mail):
George Karousatos, Esq., Attorney for Defendant (g.karousatos@bdlawfirm.com)

August 3, 2020
204 Cleveland Lane
Rockaway, NJ 07866

Honorable Maritza Berdote-Byrne
Chancery Division, General Equity Part
Morris County Superior Court
Washington & Court Streets
Morristown, NJ 07960

RE: Paul Kardos vs. Fox Hills at Rockaway Condominium Association, Inc.
Docket No.: MRS-C-102-18
Letter Brief in Reply To Defendants Opposition To Plaintiff's Motion to Amend
Hearing Date – Friday August 7, 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 Reply To Defendant's Opposition To Plaintiff's Motion To Amend The Complaint* (hereafter referred to as "Reply Brief").

STATEMENT OF FACTS

1. The Plaintiff repeats the four paragraphs under CERTIFICATION AND STATEMENT OF FACTS in the *Certification and Letter Brief in Support of Plaintiff's Motion for 2nd Amendment to Complaint* of July 14, 2020, as if fully set forth herein at length.
2. On July 24, 2019, the Court issued a *Case Management Order* stating that a "firm trial date" was scheduled for April 6, 2020, at 9:00 a.m.
3. In early Feb. 2020, the defendant's attorney, George Karousatos, Esq., and I, Plaintiff Paul Kardos, reached agreement on a settlement text entitled *Settlement Agreement & General Release* (hereafter referred to as "Settlement Agreement"). This *Settlement Agreement* is dated Feb. 6, 2020, and I signed it on Feb. 6, 2020.

4. As of today, August 3, 2020, I have no record or indication that Fox Hills has signed the *Settlement Agreement*, nor do I have any indication of any difficulties that Fox Hills may have with the *Settlement Agreement*.
5. The trial scheduled for April 6, 2020, did not take place.

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.

Date: Aug. 3, 2020

By Paul Kardos
Paul Kardos

LEGAL ARGUMENT

I. Defendant's Point I

The Defendant's Point I makes two contentions; (A) that the Plaintiff's Motion is late according to the *Case Management Order*, and (B) that the Plaintiffs' claims arise out of "obvious emergency powers" due to an unprecedented pandemic.

- A. 1) Regarding the *Case Management Order*, the scheduling for the Order anticipated a trial date of April 6, 2020. Since the trial did not take place on this date, the scheduling dates of the Order are obsolete and need to be updated when a new trial date is set.
- 2) Parties to litigation must bring all their claims in one proceeding. This is known as the entire controversy doctrine.

"The entire controversy doctrine, properly understood, encompasses all judicially cognizable facets of a dispute. The doctrine therefore reasonably requires the joinder, in a single action leading to a comprehensive disposition, of all claims and persons implicated in the entire controversy when failure to effect such joinder will result in duplicate litigation of common issues that could have been resolved in the earlier action." *Crispin v. Volkswagenwerk, AG*, 96 NJ 336, 348 (1984).

B. Regarding “obvious emergency powers” due to the pandemic,

- 1) The Governor’s Executive Orders do not provide relief from the open meeting requirements for a governing body of a community association (Title 46 Chapter 8B section 13 (a) of the *Condominium Act*).
- 2) The Board practice of voting and making decisions at secret meetings with later ratification precedes the pandemic. An example of this practice is given in item 2 of Plaintiff’s *Certification and Letter Brief in Support of Plaintiff’s Motion for 2nd Amendment to Complaint* dated July 14, 2020:

At the Fox Hills Quarterly meeting of 10/1/18, the Fox Hills Board of Directors (hereafter “the Board”) secretary stated, “OK. I’m going to make a roll call to ratify the vote that had been taken at the August work-session regarding redecorating of the clubhouse.”

II. Defendant’s Point II

The Defendant’s Point II makes two contentions; (A) that the Plaintiff’s amendment is futile and will fail, and (B) decisions required to be made in advance of the next scheduled public Board meeting need not follow the *Condominium Act* requirement for open meetings.

- A. It is too early to decide if the amendment will fail because the court has not yet interpreted the *Condominium Act* requirement for open meetings.

Where it is apparent that drafters of a statute did not contemplate a specific situation, court must interpret the statute consistent with the probable intent of the draftsman had he anticipated the situation at hand. *County of Essex v. Waldman*, 244 N.J. Super. 647 (1990).

No additional discovery is required. All documents and facts required are available in existing court filed documents and are undisputed.

- B. The *Condominium Act* requirement for open meetings has no exception for decisions required to be made in advance of the next scheduled public meeting.

III. Defendant's Point III

The Defendant's Point III states that (A) the merits of Plaintiff's claim are marginal at best, and (B) that the violation claim is of a "nebulous empty vase."

A. This is similar to the futile claim of Defendant's Point II – see Point IIA for my reply.

B. Regarding the empty vase, I maintain that the following is the legislative intent of the open meeting requirement of the *Condominium Act*:

The right of homeowners to be present at all board of director meetings and to witness deliberation and decision making is vital to the proper functioning of the democratic process. Secrecy undermines the faith of homeowners in the board and homeowner's effectiveness in fulfilling its role in a democracy.

Condominium homeowners shall have the right to attend all board meetings at which any business affecting homeowners is reasonably anticipated to be discussed or acted upon except in those circumstances specifically excluded by Title 46 Chapter 8B section 13 (a).

Suppose that the statute allowed Boards of Directors to "ratify," at an open meeting, all decisions made at all the secret meetings of the previous year. What would keep the board from waiting until the annual meeting to ratify all the decisions of the previous 12 months? I fail to see how this could possibly have been the legislatures intent.

CONCLUSION

In order for the court to consider and rule on the legislative intent of the open meeting requirement of the *Condominium Act* with respect to ratification of previously made decisions, the Court should grant the plaintiff's *Motion For Leave Of The Court For A 2nd Amendment To The Complaint*.

Date:

Aug. 3, 2020

By



Paul Kardos

CERTIFICATION OF SERVICE (R. 1:5-3)

I certify that on August 3, 2020, I mailed (via regular USPS mail) a copy of this *Reply Brief* to the following Attorney for Defendant, Fox Hills at Rockaway Condominium Association, Inc.

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

Date:

Aug. 3, 2020



Paul Kardos