EXHIBIT HH

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Reply to: Oakland Office

October 4, 2018

Via E-courts filing and First Class Mail
Honorable Peter F. Bariso, Jr., A.J.S.C.
Superior Court of New Jersey
Hudson County Courthouse
595 Newark Avenue
Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al.
Docket No. HUD-L-00607-18

Dear Judge Bariso:

Our firm represents Defendant Borough of Leonia ("the Borough") in the above matter, along with Brian Chewcaskie, Esq., the Borough Attorney. Kindly accept this letter brief in lieu of a more formal brief as the Borough's opposition to the State of New Jersey Department of Transportation's ("the DOT") motion for leave to amend its complaint. The Borough opposes the DOT's motion on the grounds that the claims in the DOT's initial complaint have already been adjudicated by the Court, and because any claims based upon new Ordinances recently adopted by the Borough after summary judgment has been granted must be filed as a new complaint, which should be equitably and judicially barred due to the Borough's reliance upon the Court's prior decision to enact same.

First, the DOT's proposed amended complaint includes identical claims in the First through Fifth Counts that were already the subject of the Court's Order dated August 30, 2018 granting summary judgment to the DOT. This Order disposed of the DOT's separate consolidated Complaint in its entirety and essentially adjudicated all issues set forth by the DOT to challenge the Borough's Ordinances, 2017-19 and 2018-5. The DOT, however, did not move to reopen the Judgment pursuant to Rule 4:50-1, nor did it move to reconsider the Order on the grounds that there was any clear error in the Court's decision or matters which the Court overlooked.

In this respect, the law is clear that a complaint cannot be amended once summary judgment has been entered by the Court. In Stalina v. D. Constr. Corp., 2012 WL 3140233 (App. Div. 2012) (annexed hereto as Exhibit A), the Appellate Division ruled, "[l]ogically, one cannot amend a complaint that no longer exists. Consequently, a plaintiff may not obtain leave to amend under *Rule* 4:9–1 after summary judgment is entered, unless the judgment is vacated upon a motion for reconsideration under *Rule* 4:49–2, or a motion to set aside a judgment under *Rule* 4:50–1.". Stalina noted the existence of unequivocal federal authority for its holding. Id. at *4-5 (citations omitted); See also Jang v. Boston Scientific Scimed., Inc., 729 F. 3d 357, 367-68 (3d Cir. 2013) (holding that when a party seeks leave to amend a complaint after judgment has been entered, it must also move to set aside the judgment because the complaint

cannot be amended while the judgment stands); Ahmed v. Dragovich, 297 F. 3d 201, 207-08 (3d Cir. 2002) (ruling that although Rule 15 allows a court to permit amendments freely "when justice so requires," the liberality of the rule is no longer applicable once judgment has been entered). Thus, in light of the Court's prior judgment on the First through Fifth Counts, the DOT's motion to reassert those claims anew is legally untenable, and the motion for leave to amend must be denied as there is no motion to reconsider the grounds on which the Court had invalidated the Borough's Ordinances on August 30, 2018. Nor is a different result warranted as the result of the Borough's pending Motion for Reconsideration as the Borough's Motion does not does not challenge the substantive grounds for the Court's ruling, but rather only challenges the procedure and scope of the results of the ruling as to the previous Ordinances.

Second, as it pertains to the claims contained in Counts Six through Ten, the DOT acknowledges that these are claims based on new Ordinances that were adopted by the Borough after summary judgment was granted to the DOT. Additionally, the Borough has 30 days to submit the new Ordinances to the DOT for approval. Thus, these claims do not arise out of the same facts and circumstances as the invalidated Ordinances at issue in the prior Complaint, but rather presents a new claim. Pursuant to Court Rule 4:9-4, a court may permit a party to serve a supplemental pleading setting forth transactions or

occurrences which took place after the date of the pleading sought to be supplemented. However, as there is no motion to file a supplemental complaint before the Court, such leave cannot be granted. Furthermore, any motion to file a supplemental pleading suffers from the same defect as the DOT's motion to file an amended complaint, namely that the prior complaint has been disposed of on summary judgment and the DOT is no longer an active party to this matter so as to be entitled to supplement the Complaint with these new claims.

As a result of the above, the Borough recognizes that the DOT has the right to file a new complaint based upon the new Ordinances and to make any challenge that they wish to same. See Rule 4:69-6(a) (requiring that an action in lieu of prerogative writs be commenced not later than "45 days after the accrual of the right to review, hearing or relief claimed."). What the Borough objects to is the manner in which the DOT has chosen to make such a challenge to the newly-enacted Ordinances because it bypasses the approval procedure set forth in N.J.S.A. 39:4-8a, and instead improperly requests this Court to instead issue an advisory opinion that the Borough's actions are illegal…a ruling that the DOT acknowledges that the Court did not make when deciding the DOT's motion for summary judgment on the ordinances in existence at the time of the Court's decision. Nor is such relief one that the Legislature has authorized in Title 39 as appropriate grounds for disapproving an adopted traffic regulation of a municipality.

Moreover, equitable and/or judicial estoppel should apply to bar the DOT from attempting to challenge the new ordinances on the same grounds they raised in their motion for summary judgment because the Borough relied upon the Court's prior decision to enact said Ordinances. Although equitable estoppel is rarely invoked against a governmental agency, it is appropriate to be applied in circumstances that would not prejudice essential government functions and where injustice and wrong may result to one who with good reason and in good faith has relied upon such conduct. Sellers v. Board of Trustees of the Police and Firemen's Retirement System, 399 N.J. Super. 51, 58 (App. Div. 2005). Here, the Borough would be prejudiced from any challenge to the new Ordinances since they were enacted in reliance upon and in accordance with the Court's decision on August 30, 2018, which decision did not find that the Borough was not acting beyond its powers in the primary sense and void, but only that its actions were voidable in the secondary sense. See Id. For all of these reasons, the DOT's motion to amend the complaint with Counts Six through Ten based upon the very same challenges to the new Ordinances must be denied.

Based upon the foregoing, the Borough respectfully requests the Court to deny the DOT's motion for leave to file the amended complaint as presently included as an exhibit to its motion papers in its entirety.

Thank you for your kind consideration to this matter as well as to the Borough's Motion for Reconsideration, which, as Your Honor is aware, must be decided as the Ordinances existed at the time of the Court's decision on August 30, 2018.

Respectfully submitted,

Ruby Kumar-Thompson
RUBY KUMAR-THOMPSON, ESQ.

Enclosure (1)
RKT:cas
cc: Jacqueline Rosa, Esq. (via eCourts filing)
Phillip J. Espinoza, Esq. (via eCourts filing)
Brian Chewcaskie, Esq. (via eCourts filing)

EXHIBIT A

2012 WL 3140233
Only the Westlaw citation is currently available.

Superior Court of New Jersey, Appellate Division.

Dashi SLATINA and Vjollca Slatina, Plaintiffs–Appellants,
v.
D. CONSTRUCTION CORP. and Armored, Inc., Defendants,
and
Newport Associates Development Company, Defendant–Respondent.

Submitted Jan. 19, 2012.
|
Decided Aug. 3, 2012.

On appeal from the Superior Court of New Jersey, Law Division, Hudson County, Docket No. L–1182–08.

Attorneys and Law Firms

Clark Law Firm, PC, attorneys for appellants (Gerald H. Clark, of counsel and on the brief).

Bivona & Cohen, P.C., attorneys for respondent (Kevin J. Donnelly, of counsel and on the brief).

Before Judges SAPP–PETERSON and OSTRER.

Opinion

PER CURIAM.

*1 Dashi Slatina suffered serious injuries when a masonry wall he was erecting toppled on him. He timely filed suit against Newport Associates Development Company (Newport), who he alleged was the owner and or general contractor. Over two years after the suit was filed, Newport obtained summary judgment dismissing the complaint with prejudice. Newport initially admitted in its answer to the complaint that it owned the property "at all relevant times" but in its summary judgment motion, Newport argued successfully it was not liable because it had sold the property the year before the accident to Shore Club North Urban Renewal Company, LLC (Shore North Urban), which hired Shore Club North Construction Company, LLC (Shore North Construction) to erect the building. Promptly after judgment, plaintiff moved to reinstate the complaint to enable him to amend it to add the actual owner and general contractor. Finding no basis to reconsider summary judgment under *Rule* 4:49–2, the court denied the motion to amend because the complaint remained dismissed.

Under the circumstances that we discuss below, we conclude justice demands that the judgment dismissing the complaint be vacated pursuant to *Rule* 4:50–1(f), for the purpose of enabling plaintiff to amend to add the actual owner and general contractor. We therefore reverse.

I.

This appeal requires us to consider the relationship of some of the business entities within what is known as the LeFrak Organization, [1] and to scrutinize the course of the litigation, and the manner in which it was disclosed that plaintiff brought suit against the wrong party as owner and general contractor.

It is undisputed that Slatina was injured on January 6, 2007, while working on a condominium construction project at One Shore Lane in Jersey City. He filed his complaint on March 3, 2008. In addition to naming his employer, D Construction Corp., he claimed negligence against Armored, Inc. (Armored), and Newport. He alleged Newport "owned, leased, maintained, managed, operated and/or controlled certain piece(s) of real property, located at 1 Shore Lane, Jersey City, New Jersey."

In its May 2008 answer, Newport denied that allegation "except admit[ed] that at all relevant times, the defendant NEWPORT ASSOCIATES DEVELOPMENT COMPANY, owned certain real property, located at 1 Shore Lane, Jersey City, New Jersey." In response to the allegation that "at all relevant times," both Newport and Armored "were under a duty to use care to properly maintain the premises in a safe and suitable condition and to inspect for any dangerous conditions on the premises[,]" Newport "denie[d] knowledge or information sufficient to form a

belief" as to the allegation. Although Newport included among its defenses that plaintiff had failed to join indispensable parties, counsel certified, pursuant to *Rule* 4:5–1(b)(2), "no other party should be joined."

In its responses to Uniform Interrogatories—Form C, *see Rule* 4:17–1(b), Appendix II, served in January 2009, Newport did not contradict its original admission that it was the owner. In response to interrogatory 3, which seeks additional information about a third-party action, Newport referred to its defenses and cross-claims in its answer to the complaint. Newport also denied negligence, but did not address ownership. In response to interrogatory 4, which requests the identity of persons with knowledge of relevant facts, Newport referred to, among others, all persons or entities named in the parties' discovery, but did not expressly name the property owner or construction firm.

*2 On the other hand, in its response to form interrogatory 13 requesting insurance information and copies of policies, Newport disclosed multiple insurance policies covering the project. Many policies with effective dates of May 2006 listed Shore North Urban and Shore North Construction as the only named insureds. However, a month after Slatina's injury, numerous endorsements were issued that added Newport as a named insured. In February 2007 endorsements, Shore North Urban was described as the sponsor, Shore North Construction was described as the general contractor, and Newport was included without further description.[2] The endorsements also added Shore Manager Corp. (Shore Manager), which was described as the corporate manager of Shore North Urban. In January 2008 endorsements, LeFrak Organization, Inc. was added as a named insured.

In D Construction's answers to Form C interrogatories, it included representatives of Newport among its list of persons with knowledge, but did not name Shore North Urban or Shore North Construction. The answers were certified by Carmen Rullo, vice-president.

Pursuant to a January 22, 2010 scheduling order, discovery was extended to May 15, 2010, depositions were to be completed by February 22, 2010, and liability expert reports were to be served by March 19, 2010 by plaintiff and April 23, 2010 by defendant.[3] Trial was scheduled for June 7, 2010.

At a deposition on January 6, 2010, Rullo stated that he understood that Newport was the general contractor of the construction project where Slatina was injured. But he could not articulate a basis for his statement. In the same deposition, Rullo also identified "Shore Club Construction" as the general contractor. Marked at the deposition was a purchase order from "Shore Club Construction Company" dated January 23, 2006 authorizing D Construction to supply labor, material and supervision in connection with installation of masonry blocks, however, it referenced work at the Shore Club South tower, not Shore Club North.

Also deposed January 6, 2010 was Sheila Mason, who initially stated she was employed as a construction superintendent for Newport, which had employed her for over twenty-three years. However, defense counsel interjected questions, eliciting a clarification that "[e]very building has another company. And I worked for that building when I'm doing a building." She then stated she worked for "Shore South Construction" in January 2007, which she then restated as "Shore Club Construction Company." She explained that two buildings were under development, known as Shore South and Shore North (which was where Slatina was injured). Although she later worked for Shore North Construction, she was not employed there when the accident occurred, but she responded to the accident scene when called.

She described Newport as the "main office" as distinct from one of the general contractors, but she generally professed ignorance regarding whether Newport had an ownership interest in the construction firms. She confirmed that she sent payroll and timesheets to Newport. While she worked as a superintendent for building-specific construction companies, she personally received paychecks from a different entity whose name included the word "Newport" but was not "Newport Associates Development Company."

*3 In responses to supplemental interrogatories certified on February 25, 2010 by Paul Bozzo, who described himself as "Associate Counsel with the LeFrak Organization," Newport provided detailed charts of the ownership structure of Newport, Shore North Urban and Shore North Construction. Newport denied it was a general contractor, denied its employees were engaged in the construction project, and denied it entered into a

contract for the construction of the building at One Shore Lane.

At a subsequent deposition on March 5, 2010, Bozzo expressly stated that Newport did not own One Shore Lane; Shore North Urban did. He explained that the "LeFrak Organization" is not itself a "legal entity" but refers to various business entities that are owned and operated by the LeFrak family. Although he rejected characterizing Newport as a LeFrak Organization entity, he stated that a LeFrak entity owned 50.425 percent of Newport.[4] Newport transferred One Shore Lane to Shore North Urban for reported consideration of over $4 million, as evidenced by a deed dated March 13, 2006 and marked as an exhibit. The business entities owning Newport and Shore North Urban were not the same, but he stated Richard LeFrak was the ultimate owner of Shore North Urban, as well as Shore North Construction.[5] Shore North Urban entered into a general construction contract with Shore North Construction dated March 1, 2006, which was marked at the deposition. Vice Presidents of Shore Club Manager Corp. (Shore Manager) executed the contract for each of the two parties. Bozzo explained that Shore Manager served as the corporate manager for each of the two limited liability companies.

On April 7, 2010, Newport filed its motion for summary judgment. Newport relied on Bozzo's testimony, the deed transferring the property from Newport to Shore North Urban, and the construction contract between Shore North Urban and Shore North Construction. Newport argued the complaint should be dismissed "because the facts of this case demonstrate that Newport Associates Development Company did not own the property at the time of plaintiff's accident, and was not the general contractor at the site."

On May 7, 2010, Slatina's attorney filed an ex parte motion seeking to be relieved as counsel and seeking adjournment of the motion for summary judgment to enable Slatina to retain new counsel.[6] A week later, he nonetheless filed opposition to the motion for summary judgment consisting of "an attorney certification in opposition," in which he argued there were disputed issues of fact regarding Newport's supervisory role, citing statements in the Mason and Rullo deposition. Counsel for Newport responded with an "attorney's certification of counsel in reply to plaintiffs' opposition," emphasizing Bozzo's testimony, and highlighting that neither Mason nor Rullo, as they conceded in their testimony, were personally knowledgeable about the relationships among the involved business entities.[7]

*4 The court granted Newport's motion by order entered May 14, 2010.[8] Two weeks later, the presiding judge granted plaintiffs' counsel's application to be relieved after reviewing two certifications in camera, although noting on his order the case was closed.

On June 3, 2010, Slatina's present counsel filed his motion to reinstate the complaint, and for leave to file an amended complaint. The proposed amended complaint named Shore North Urban and Shore North Construction, Shore Manager Corp., LeFrak Organization, Inc., and various other entities as well as various fictitiously named parties. Although not formally styled as a motion for reconsideration under *Rule* 4:49–2, the court agreed to consider it as such.

The court determined that absent a pre-existing complaint, a plaintiff has nothing to amend and a motion to amend must be denied, citing *Falco v. Community Medical Center*, 296 *N.J.Super.* 298 (App.Div.1997). The court also concluded the only way to restore the complaint would be upon a reconsideration, or if judgment were vacated after an appeal. Applying those principles, the court held there was no basis to reconsider the grant of summary judgment as the court did not overlook any facts or law pertaining to the merits of the decision as to Newport, citing *D'Atria v. D'Atria*, 242 *N.J.Super.* 392 (Ch. Div.1990). Consequently, the court denied the motion for leave to amend, as judgment has already been correctly entered.

Plaintiff appeals and presents the following points for our consideration:

I. IN THE INTEREST OF JUSTICE PLAINTIFFS SHOULD HAVE BEEN FREELY GRANTED LEAVE TO FILE A FIRST AMENDED COMPLAINT TO CORRECT THE MISIDENTIFICATION OF PARTIES PURSUANT TO RULES 4:9–1; 4:9–3.

A. The Amended Complaint Should Have Been Deemed to Relate Back to the Original Complaint.

B. Newport's Failure to Disclose the Apparent Misidentification Issue in its Answer Violated Rule 4:5–1(b)(2).

C. Defendant's Arguments Should Have Been Rejected.

II. THE CLAIMS AGAINST NEWPORT SHOULD ALSO HAVE BEEN REINSTATED, AT LEAST UNTIL THE CONCLUSION OF DISCOVERY.

II.

Logically, one cannot amend a complaint that no longer exists. Consequently, a plaintiff may not obtain leave to amend under *Rule* 4:9–1 after summary judgment is entered, unless the judgment is vacated upon a motion for reconsideration under *Rule* 4:49–2, or a motion to set aside a judgment under *Rule* 4:50–1. We are unaware of a reported New Jersey decision expressly stating that principle. *Cf. Falco, supra,* 296 *N.J.Super.* at 325–26 (court properly denied plaintiff's motion for leave to amend following grant of summary judgment on all counts where plaintiff did not allege essential facts to support cause of action). However, we are guided by the broad agreement of federal courts, in applying analogous Federal Rules of Civil Procedure, that "[o]nce a final judgment has been entered, the district court lacks power to rule on a motion to amend unless the party seeking leave first obtains relief under *Rule* 59(e) or 60." 3–15 James W. Moore et al., Moore's Federal Practice—Civil ¶ 1513[2] (3d ed.1997) (citing cases). *See also* 6 Charles Alan Wright, et al., *Federal Practice & Procedure,* § 1489 (2010) (same and citing cases). *Fed.R.Civ.P.* 59(e) and *Fed.R.Civ.P.* 60 are analogous to our *Rule* 4:49–2 and *Rule* 4:50–1. We have deemed federal courts' interpretation of analogous federal rules persuasive authority. *See Baumann v. Marinaro,* 95 *N.J.* 380, 390–91 (1984) (relying on federal court interpretation of *Fed.R.Civ.P.* 59(e), in interpreting *Rule* 4:49–2); *Saldana v. City of Camden,* 252 *N.J.Super.* 188, 194 n. 1 (App.Div.1991).

***5** A court in its discretion may construe a motion to amend after entry of judgment as incorporating a motion to reconsider or set aside a judgment. *Camp v. Gregory,* 67 *F.*3d 1286, 1290 (7th Cir.1995) ("absent a showing of prejudice to the defendants, we believe that the district court retains the discretion to treat a *Rule* 15(a) motion [to amend] as one also made under *Rules* 59 or 60"). On the other hand, explicit reference to the court rule, and in the case of the *Rule* 4:50–1, the specific subsection, would assist the court and the opposing party in evaluating the motion.

The liberality with which our courts treat motions to amend, *see, e.g., Kernan v. One Washington Park Urban Renewal Assoc.,* 154 *N.J.* 437, 456 (1998), would not apply equally to such motions post-judgment, because of the countervailing policy favoring finality of judgments. *See Combs v. PriceWaterhouse Coopers, L.L.P.,* 382 *F.*3d 1196, 1205–06 (10th Cir.2004). *See also Federal Practice & Procedure, supra,* § 1489. Unexcused delay in seeking the amendment until after judgment is a ground to deny leave. *Diersen v. Chicago Car Exch.,* 110 *F.*3d 481, 489 (7th Cir.1997); *Federal Practice & Procedure, supra,* § 1489, n. 17 (unreasonable delay is grounds for denial). On the other hand, the court should also further the policy favoring the determination of cases on the merits. *United States ex rel. Roop v. Hypoguard U.S., Inc.,* 559 *F.*3d 818, 824 (8th Cir.2009). *See also Lawlor v. Cloverleaf Memorial Park Assoc.,* 56 *N.J.* 326, 340–41 (1970) ("courts should be liberal in allowing amendments to save actions if possible, from the bar of Statute of Limitations and should disregard technical objections in the effort to determine the real issues on their merits and do substantial justice between litigants") (quotation and citation omitted). *Cf. also Crispin v. Volkswagenwerk, A.G.,* 96 *N.J.* 336, 338 (1984) (referring to the "paramount policies of our law" to afford a party "an opportunity to have the claim adjudicated on the merits").

We are mindful that we review a motion for leave to amend under an abuse of discretion standard. *Notte v. Merch. Mut. Ins. Co.,* 185 *N.J.* 490, 501 (2006). The same standard of review applies to a court's decision to deny a motion for reconsideration under *Rule* 4:49–2. *Cummings v. Bahr,* 295 *N.J.Super.* 374, 389 (App.Div.1996) (abuse of discretion standard applied). The trial court correctly concluded that Slatina could not amend his complaint without first setting aside the judgment and restoring the complaint. The trial court also correctly applied the well-established standard for determination of a motion for reconsideration. *D'Atria, supra,* 242 *N.J.Super.* at 401 (stating that reconsideration should be utilized where (1) the court has based its decision "upon a palpably incorrect or irrational basis;" (2) it is obvious the court "did not consider, or failed to appreciate the significance of probative, competent evidence[;]" or alternatively, the

party presents "new or additional information ... which it could not have provided on the first application"). *See also Cummings, supra,* 295 *N.J.Super.* at 384–85. In so doing, the court reached the unassailable conclusion that it had not erred in granting Newport dismissal with prejudice because it had not erred as a matter of law, nor had it overlooked evidence previously presented.

*6 However, we conclude the trial court has broader discretion than it exercised, to consider whether, in the interests of justice, it was appropriate to restore the complaint, for the purpose of enabling plaintiff to add additional parties. Under the circumstances, plaintiff was entitled to relief from the judgment pursuant to *Rule* 4:50–1(f), which empowers a court to relieve a party from a final judgment for "any other reason justifying relief from the operation of the judgment or order."

The court has broad discretion to grant relief under subsection (f) to address exceptional circumstances. *Manning Eng'g, Inc. v. Hudson Cnty. Park Comm'n,* 74 *N.J.* 113, 122 (1977); *Court Inv. Co. v. Perillo,* 48 *N.J.* 334, 341 (1966) (the boundaries of subsection (f) "are as expansive as the need to achieve equity and justice"). In *Baxt v. Liloia,* 155 *N.J.* 190, 210–11 (1998), the Court allowed plaintiff, in an action against a bank's attorney for professional misconduct, to reopen under *Rule* 4:50–1(f) the underlying action by the bank against the plaintiff, which had been dismissed after settlement, for the limited purpose of seeking fees against the bank's attorney.

We conclude comparable relief is warranted here. The judgment should be reopened not for the purpose of relitigating plaintiff's claim against Newport, but to provide a vehicle for the amendment. The record is insufficient to enable us to determine whether plaintiff has met any of the specific grounds for relief under *Rule* 4:50–1(a)–(c). In view of Newport's initial admission of ownership in its answer to the complaint, and its omission of any reference to the actual owner and general contractor in its interrogatory responses, we conceivably might deem it excusable that plaintiff failed to move to amend until Newport disclosed the deed and construction contract in 2010. *Cf. R.* 4:50–1(a) (allowing relief from a final judgment because of "surprise, or excusable neglect"). However, the record does not reflect why plaintiff did not move to amend thereafter, although concededly the time period was relatively brief before Newport itself moved for summary judgment. We are unaware of why Slatina's original lawyer sought to be relieved, and whether those reasons were related in anyway to the failure to move to amend before judgment was entered. The record is also insufficient to address whether the initial admission of ownership, and subsequent denial, satisfies *Rule* 4:50–1(c), which authorizes relief from a judgment on the basis of "fraud ... misrepresentation, or other misconduct of an adverse party."

Nonetheless, denial of relief would work an injustice that we cannot ignore, and which *Rule* 4:50–1(f) empowers the court to address. Slatina timely brought suit against Newport, apparently believing it to be the owner and or general contractor. Newport initially admitted it owned the property where Slatina was injured. Its interrogatory answers, and its counsel's *R.* 4:5–1(b)(2) certification did not expressly deny ownership, nor identify the actual owner and general contractor, which are ultimately linked by common ownership. While the insurance policies named Shore North Urban and Shore North Construction, they also included Newport as a named insured, albeit pursuant to post-accident endorsements. Denial of relief would enable Shore North Urban and Shore North Construction to avoid responding on the merits to a lawsuit, largely as a result of the delayed disclosure by Newport, a related entity. The catch-all rule should be used here to further the policy of promoting decisions on the merits. *See Davis v. DND/ Fidoreo, Inc.,* 317 *N.J.Super.* 92, 100–01 (App.Div.1998) ("*R.* 4:50–1(f) calls for the exercise of sound discretion, 'guided by equitable principles, and in conformity with the prescription that any doubt should be resolved in favor of the application to set aside the judgment to the end of securing a trial upon the merits.' ") (quoting *Goldfarb v. Roeger,* 54 *N.J.Super.* 85, 92 (App.Div.1959) (additional internal quotation and citation omitted). Newport would also suffer no prejudice, as the complaint would be restored solely for the purpose of allowing the amendment, and not to subject Newport anew to potential liability.

*7 Also, favoring relief is the promptness with which plaintiff, through new counsel, acted in seeking restoration of the complaint after judgment was entered. *Reg'l Constr. Corp. v. Ray,* 364 *N .J.Super.* 534, 541 (App.Div.2003) (affirming finding of excusable neglect "when examined against the very short time period between the entry of default judgment and the motion

to vacate"); *Jameson v. Great Atl. & Pac. Tea Co.*, 363 *N.J.Super.* 419, 428 (App.Div.2003) (noting the "speed and diligence with which A & P moved to attempt to vacate the default judgment"), *certif. denied*, 179 *N.J.* 309 (2004); *Morales v. Santiago*, 217 *N.J.Super.* 496, 504–05 (App.Div.1987) (reversing denial of motion to vacate because, among other factors, "[s]ellers moved to vacate the judgment soon after it was entered").

Finally, we do not address the issue whether the amended complaint, once filed and served, will relate back to the date of the original pleading. *See R.* 4:9–3. Notwithstanding the significant relevant evidence in the record on that issue, the newly-named defendants should have an opportunity to be heard on whether "they received such notice" of the action that they would not be prejudiced in maintaining a defense, and whether they "knew or should have known that, but for a mistake concerning the identity of the property party," the action would have been brought against them.

Reversed. We do not retain jurisdiction.

All Citations

Not Reported in A.3d, 2012 WL 3140233

Footnotes

1 Paul Bozzo described the LeFrak Organization as the informal appellation of various formal business entities controlled by Richard LeFrak.

2 Apparently, at some point before February 2007, Shore Club North Construction Company, LLC was renamed Shore North Construction Company, LLC, and Shore Club North Urban Renewal Company, LLC was renamed Shore North Urban Renewal Company, LLC.

3 Apparently, plaintiff did not timely serve a liability expert's report.

4 According to the chart marked at the deposition, Simon Newport Limited was a 49.425 percent partner, EGLIMC, LLC was a one percent partner; and LF Newport Jersey Limited Partnership was a 49.575 percent partner, whose ninety-nine percent partner was LF Delaware NJ Limited Partnership, which Bozzo described as a Richard S. LeFrak entity. Nonetheless, Bozzo testified, "[T]he LeFrak entity owns 50 .425 percent" of Newport. "[T]hat chain [of ownership ultimately leading to Richard S. LeFrak] ... would own 99 percent of LF Newport Jersey Limited Partnership, which in turn owns 50.425 of Newport Associates Development Company."

5 Shore North Urban's ninety-nine percent member was Shore Equity LLC, whose ninety-nine percent member was S–R Capital Realty Associates, LLC, whose ninety-nine percent member was Stone Capital Realty LLC, whose three thirty-three percent members were RSL 2005 Family Trust, Harrison LeFrak GST Trust, and James LeFrak GST Trust. Shore North Construction's ninety-nine percent member was RL Capital Realty Assoc., LLC, whose ninety-nine percent member was Richard S. LeFrak. The one percent member was Shore Manager Corp., which was one hundred percent owned by RL Corporate Holdings, LLC, whose hundred percent member was Richard S. LeFrak.

6 The motion is not included in the record.

7 We note that argument is appropriately included in a brief, not a certification of counsel. *See* Pressler & Verniero, *Current N.J. Court Rules*, comment on *R.* 1:6–5 (2012) ("The function of briefs is the written presentation of legal argument based on facts already of record.").

8 It is undisputed that Newport was the sole remaining defendant. The record does not include the order dismissing Armored, Inc. D Construction had obtained summary judgment dismissing the claims against it by order entered March 19, 2010.

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JACQUELINE ROSA, Plaintiff, v. BOROUGH OF LEONIA, BOROUGH OF LEONIA COUNCIL, TOM ROWE in his capacity as acting Borough Clerk of the Borough of Leonia, JUDAH ZEIGLER, in his official capacity as Mayor of the Borough of Leonia, JOHN DOE MAINTENANCE COMPANIES 1-5, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION – HUDSON COUNTY DOCKET NO. HUD-L-607-18 Civil Action **CERTIFICATION OF SERVICE FOR THE BOROUGH OF LEONIA'S OPPOSITION TO THE STATE'S MOTION FOR LEAVE TO AMEND**
STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION, Plaintiff/Intervenor, v. BOROUGH OF LEONIA, NEW JERSEY, Defendant.	

I, CHRISTINA M. SARRAS, of full age, certifies as follows:

1. I am a paralegal at the law firm of Cleary Giacobbe Alfieri Jacobs, LLC.

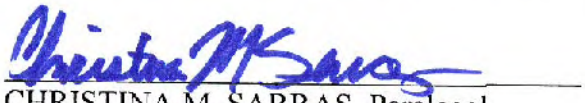
2. I hereby certify, that on this day, I caused Defendant, the Borough of Leonia's LETTER BRIEF in Opposition to Plaintiff-Intervenor's Motion for Leave to File Amended Complaint and all supporting papers, in the above-referenced matter to be filed on e-courts, and in so doing have simultaneously served a copy of Defendant's Opposition

papers upon all counsel of record, and have caused to be served via first class mail all parties who have not been served electronically.

3. I have also forwarded the aforementioned Letter Brief and all supporting papers via first class mail to the managing judge assigned to hear this matter.

4. 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.

CLEARY GIACOBBE ALFIERI JACOBS, LLC
Attorneys for Defendant, Borough of Leonia



CHRISTINA M. SARRAS, Paralegal

Dated: October 4, 2018

EXHIBIT II

Seigel Law
PROTECTING THE INJURED

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October 5, 2018

VIA E-Courts & Lawyer's Service
Honorable Peter F. Bariso
Superior Court of New Jersey
Hudson County Superior Court
583 Newark Avenue
Jersey City, NJ 07306

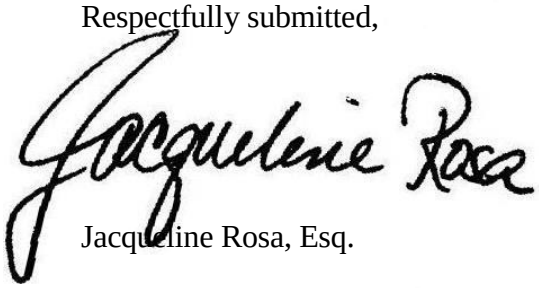
Re: Rosa v. Leonia, et al.
HUD-L-0607-18

Dear Judge Bariso:

As Your Honor already knows, I am the Plaintiff in the above captioned matter. A handful of motions are on for October 12, 2018 seeking various types of relief. Please allow this letter to serve as opposition to the Defendant's Motion for Reconsideration. Plaintiff will rely on and join in on the opposition submitted by the Department of Transportation.

Please do not hestitate to contact me, should Your Honor require anything further.

Respectfully submitted,



Jacqueline Rosa, Esq.

.

EXHIBIT JJ

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
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GURBIR S. GREWAL
Attorney General

MICHELLE L. MILLER
Director

October 5, 2018

Via eCourts and UPS
Honorable Peter F. Bariso, Jr., A.J.S.C.
Hudson County Administration Building
9th Floor - Chambers 906
595 Newark Avenue
Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al.
Docket No.: HUD-L-607-18
Motion for Leave to File an Amended Complaint
Return Date: October 12, 2018
Oral Argument Requested

Dear Judge Bariso:

On behalf of the State of New Jersey Department of Transportation ("DOT"), we respectfully request that Your Honor accept this letter brief, in lieu of a more formal brief, in reply to the opposition filed by the Borough of Leonia ("Leonia") to the DOT's motion for leave to file an amended complaint.

As a threshold matter, the DOT moves to amend its complaint to assert additional claims regarding Leonia's adoption

of Ordinance Nos. 2018-14 and 2018-15 ("the new ordinances") on September 17, 2018, after this court on August 31, 2018, entered an order for summary judgment in favor of the DOT regarding Leonia Ordinance Nos. 2017-9, 2018-2, and 2018-5 ("the old ordinances"). In this regard, the DOT is not seeking to reopen any claims. The DOT is not requesting reconsideration. Instead, the DOT is seeking leave to amend its complaint to assert claims regarding the new ordinances in this pending action, pursuant to the entire controversy doctrine. R. 4:30A.

The entire controversy doctrine, Rule 4:30A, is a claim joinder mandate, requiring all parties in an action to raise in that action all transactionally related claims each had against each other, whether assertable by complaint, counterclaim, or cross-claim. See generally, Wadeer v. New Jersy Mfrs. Ins. Co., 220 N.J. 591, 604-06 (2015). The doctrine's purposes include (1) the need for complete and final disposition through the avoidance of piecemeal decisions; (2) fairness to parties to the action and those with a material interest in the action; and (3) efficiency and the avoidance of waste and the reduction of delay. Id. at 605.

In applying the entire controversy doctrine here, this action is pending based on the remaining claims of plaintiff Jacqueline Rosa. In addition, both the old ordinances and the new ordinances concern the same subject matter, namely Leonia's

adoption of essentially the same traffic ordinances, however divided by Leonia. And both the new ordinances and the old ordinances are legally invalid pursuant to Title 39, for essentially the same reasons. Therefore, based on the claim joinder mandate of the entire controversy doctrine, the DOT has appropriately requested leave to amend its complaint in this pending action to assert its claims against Leonia regarding the new ordinances. R. 4:30A.

In addition, as the DOT asserts in its motion brief, amendment of the DOT's complaint is appropriate, pursuant to Rule 4:9-1, which provides that a party may amend any pleading subsequent to the filing of a responsive pleading by requesting leave of court, which is to be freely given in the interest of justice. A motion for leave to amend "should generally be granted even if the ultimate merits of the amendment are uncertain." G & W, Inc. v. Borough of E. Rutherford, 280 N.J. Super. 507, 516 (App. Div. 1995). "So should amendment be permitted to avoid the possibility of inconsistent verdicts and duplicative actions, particularly when no undue prejudice to any party is demonstrated." Pressler, Current N.J. Court Rules, comment 2.1 to R. 4:9-1. Here, Leonia's arguments, in effect, concern the merits of the DOT's claims regarding the new ordinances. Leonia's arguments, however meritless, could be the subject of pleading and motion practice after the DOT files its amended complaint.

In addition, Leonia's arguments regarding equitable and/or judicial estoppel are without merit. In its argument, Leonia has incorrectly relied on Sellers v. Board of Trustees of the Police and Firemen's Retirement System, 399 N.J. Super. 51 (App. Div. 2005). In Sellers, the court applied the doctrine of equitable estoppel to government actions in the context of a pension system enrollment denial. Id. at 60. However, contrary to Leonia's arguments here, Sellers is significantly distinguishable because the petitioner there was able to show detrimental reliance on government action. Id. at 60-63. In our case, unlike in Sellers, Leonia has misinterpreted this court's decision and order for summary judgment.

While this court granted the DOT's summary judgment motion on the basis that the old ordinances, on their face, were legally invalid because they were not submitted to the DOT Commissioner for approval in accordance with N.J.S.A. 39:4-8(a), this court did not reach the merits of certain of the DOT's other arguments, nor did it need to. This court indicated that its decision was limited to whether Leonia's adoption of the old ordinances violated the provisions of N.J.S.A. 39:4-8(a), and that the other arguments presented were part of the record in this case. (DOT Exhibit B, T59:24-60:10.) Thereafter, Leonia adopted the new ordinances, which are essentially a bifurcation of the old ordinances and are based upon Leonia's misinterpretation of this

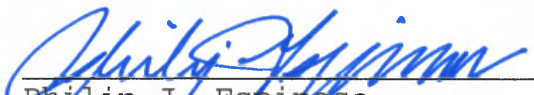
court's decision granting the DOT's motion for summary judgment. (DOT Exhibits A and B.)

There is no meaningful difference between the old ordinances and the new ordinances. The new ordinances on their face, without legal authority under Title 39, still prohibit motorists from traveling through most of Leonia's streets during the designated times unless the motorists are Leonia residents or are traveling to and/or from a Leonia destination. And since the new ordinances are legally invalid on their face, for essentially the same reasons as the old ordinances, and the DOT Commissioner does not have the authority to approve legally invalid ordinances, Leonia's submission of one of the new ordinances to the DOT Commissioner because it has an impact on a State roadway is a legally meaningless gesture.

For the foregoing reasons, and the reasons the DOT has asserted in its motion brief, the DOT respectfully submits that the DOT's motion for leave to file an amended complaint should be granted.

Respectfully submitted,

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Philip J. Espinosa
Deputy Attorney General
(Attorney ID No. 030311988)

Ryne A. Spengler
Deputy Attorney General
(Attorney ID No. 169002015)

cc via eCourts and email:
Jacqueline M. Rosa, Esq.
Brian M. Chewcaskie, Esq.
Ruby Kumar-Thompson, Esq.

EXHIBIT KK

CLEARY | GIACOBBE | ALFIERI | JACOBS LLC

RUBY KUMAR-THOMPSON, Partner
rkumarthompson@cgajlaw.com

Reply to: Oakland Office

October 8, 2018

Via E-Courts Filing
Honorable Peter F. Bariso, Jr., A.J.S.C.
Superior Court of New Jersey
Hudson County Courthouse
595 Newark Avenue
Jersey City, New Jersey 07306

Re: Jacqueline Rosa v. Borough of Leonia, et al.
Docket No. HUD-L-00607-18

Dear Judge Bariso:

Please accept this letter brief, in lieu of a more formal brief, on behalf of Defendant Borough of Leonia ("the Borough") in reply to the opposition by the State of New Jersey Department of Transportation ("the DOT") and Jacqueline M. Rosa, Esq. to the Borough's motion for reconsideration of the Order granting summary judgment or, alternatively, for a stay of the Order.

PRELIMINARY STATEMENT

As set forth hereafter, the DOT has not argued any applicable law that contradicts the law set forth in the Borough's moving papers, nor has the DOT provided the Court with any new evidence to support a denial of the motion for reconsideration.

As to the law, the DOT has not, and cannot, refute that an interlocutory order is subject to reconsideration at any time in the proceeding in the

interests of justice. The DOT also has not, and cannot, refute the well-settled law that a court can, and should, blue-pencil an ordinance that is determined to contain invalid provisions. Indeed, the DOT argues that the motion is moot by virtue of the Borough's adoption of new ordinances revising the ordinances that were the subject of the DOT's complaint ("the original Ordinances"), but that argument is not based on fact or law and should not preclude this court from considering the Borough's Motion of Reconsideration for the reasons set forth below.

The DOT also argues that the Court should not issue a stay of the Court's Order under Crowe v. DeGoia; however, imposition of a stay in the context of curing procedural infirmities in adoption of an ordinance is appropriate for the reasons set forth below.

LEGAL ARGUMENT

I. The Motion For Reconsideration Is Not Rendered Moot By The Borough's Adoption Of Ordinances Revising One Of The Three Original Ordinances That Were The Subject Of The DOT's Complaint And Were Under Review On Its Motion For Summary Judgment.

The DOT glosses over the fact that its Complaint challenged three (3) ordinances including one (1) that did not regulate traffic (Ordinance No. 2018-2) and the Court's ruling was limited to Ordinance No. 2018-5, insofar as it included streets for regulation which impacted traffic on Grand Avenue for which no approval from the Commissioner was sought following said adoption.

In so doing, the DOT mistakenly contends that the revised Ordinance Nos. 2018-14 and 2018-15 "supersede and replace" Ordinance No. 2018-5 (and the other two), but that is clearly not the case. The revised Ordinances indicate on their face that they are revisions of Ordinance Nos. 2017-19 and 2018-5. The adoption of those Ordinances did not wipe the original Ordinances off the books, nor does it preclude the Borough from seeking to clarify the Court's ruling through reconsideration as set forth in Point Two below. If they did, then the DOT would not have sought to amend its now-adjudicated Complaint with Counts One through Five in their proposed amended Complaint, which Counts challenge the Borough's Ordinances 2018-5 and 2017-19.

II. The DOT's Assertion That R. 4:49-2 Sets The Standard Of Review On Reconsideration Is Erroneous; As The Rules And Law Cited By The Borough Clearly Set Forth A Very Loose Standard Given The Interlocutory Nature Of The Order.

As set forth in the Borough's moving brief, R. 1:7–4(b) stipulates that motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2, which provides that a court may reconsider an order that does not adjudicate all of the parties' claims in its sound discretion in the interests of justice, such as where a court recognizes a clear error in the earlier decision. See Ahktar v. JDN Properties at Florham Park, 439 N.J. Super. 391, 399-400 (App. Div.), certif. denied, 221 N.J. 566 (2015). There are no

restrictions on the exercise of the power to revise an interlocutory order and "the trial court has the inherent power to be exercised in its sound discretion, to review, revise, reconsider and modify its interlocutory orders *at any time* prior to the entry of final judgment." Lombardi v. Masso, 207 N.J. 517, 536 (2011) quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988) (emphasis added).

The DOT argues that the standard is R. 4:49-2, but that applies to final orders only.

III. The Court Applied The Incorrect Standard When It Granted The DOT's Motion for Summary Judgment Because Plaintiff Did Not Have The Opportunity To Dispute The Facts Set Forth By The DOT.

The DOT based its Motion for Summary Judgment on the certification of DOT traffic engineer Mark A. Hiestand. Mr. Hiestand's certification formed the foundation for the position, which the Court accepted, that the Ordinance has an impact on a State roadway, and is therefore subject to the notice provisions contained in N.J.S.A. 39:4-8(a). Since the DOT's motion was filed only nine (9) days after the Borough filed its Answer, the Court applied the incorrect burden on the Borough to dispute the Ordinance's impact on a State roadway.

The New Jersey Supreme Court has held that when a "suit is in an early stage and still not fully developed, [the Court] ought to review a judgment terminating it now from the standpoint of whether there is any basis upon

which plaintiff should be entitled to proceed further." Bilotti v. Accurate Forming Corp., 39 N.J. 184, 193 (1963) (emphasis added). See also Driscoll Const. Co., Inc. v. State, Dept. of Transportation, 371 N.J. Super. 304, 318 (App. Div. 2004) ("To the extent that evidence was not fully presented due to the procedural infancy of the case, the motion for summary judgment was premature").

When the Court found that the Ordinance impacted State Route 93 a.k.a. Grand Avenue, it did so without considering that the Ordinance may not have an impact on a State roadway. As the Court explained:

> [I]f it doesn't impact the state roadway, we're not here. And I don't think the Department of Transportation has ever taken that position. What they're saying is, this is why it's invalid. The ordinance impacts a state roadway. That's the basis of my decision. . .

(See Tr. at 70, ll 14-19).

Instead of relying upon the DOT's position, in this early stage of discovery, the Court was supposed to determine whether there can be "any basis" to allow the case to proceed. A traffic study may show, contrary to the certification of a DOT employee, that the Ordinance does not impact a State roadway.

Since the Court applied the incorrect legal standard when it granted the DOT's motion for summary judgment, the Order was entered in error.

IV. Assuming *Arguendo* That The Court Properly Found That All Of The Original Ordinances Had An "Impact On A State Highway", It Nonetheless Was Not Justified In Invalidating The Entirety Of The Original Ordinances.

The Court made the following determination at oral argument, "I'm making the factual finding that since you cannot turn off a state highway, you are impacting the state roadway." (Tr. at 25, ll. 19-22.) The Court relied on the statement by the DOT Engineer in a Certification that the regulation of traffic at the intersections of Grand Avenue and certain streets by the Ordinances and existence of signs at those intersections met the definition of "impact on a state highway" under the DOT regulations and the Borough's concession that there were signs at those intersections to reach its decision. Based on its determination that some of the streets listed in the Ordinances impacted a State highway, the Court threw the baby out with the bath water by invalidating the entirety of the Ordinances.

However, the Court improperly invalidated all of the Ordinances instead of allowing the Ordinance to stand to the extent that the closed off roadways do not impact a State roadway. Utilizing "judicial surgery", "Courts will enforce severability where the invalid portion is independent and the remaining portion forms a complete act within itself." Inganamort v. Borough of Fort Lee, 72 N.J. 412, 423 (1977) (emphasis added).

Since a portion of the Ordinances can be maintained even if *arguendo* a portion of the Ordinances are invalid, the Court improperly held that all of the Ordinances are invalid. The Borough now asks the Court -- with the benefit of long-standing legal authority -- to reconsider the Order granting summary judgment and declare that only those portions of Ordinance No. 2018-5 pertaining to Grand Avenue intersections are invalid and stricken therefrom.

V. If The Court Is Not Inclined To Reconsider Its Order Granting Summary Judgment, It Should, Nonetheless, Enter A Stay Of That Order To Afford The Borough The Opportunity To Seek The Approval Of The DOT And, Absent Such Happening, Filing An Appeal To The Appellate Division Of Any Denial.

The DOT has not refuted, let alone mentioned, the litany of cases cited by the Borough as precedent for a court to enter a stay of an order granting summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action or to correct an infirmity. See Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002); Levin v. Parsippany-Troy Hills Tp., 82 N.J. 174 (1980); Route 15 Associates v. Jefferson Tp., 187 N.J. Super. 481 (App. Div. 1982); Pop Realty Corp. v. Springfield Bd. of Adjustment of Springfield Tp., 176 N.J. Super. 441 (Law Div. 1980).

Although the Borough believes the old Ordinances were valid and, with blue-lining, would withstand any challenge, it elected to adopt new Ordinances to allow it the ability to seek DOT approval to the extent necessary. Ordinance No. 2018-15 was adopted on September 17, 2018 and, consistent with N.J.S.A.

39:4-8a, the Borough will seek approval within thirty (30) days thereof. Nonetheless, the Borough wanted to give the Court the opportunity to correct its prior ruling denying the Borough's request for a stay while it considered its options. In light of the above cited cases, it is respectfully submitted that it is appropriate to allow the Borough time to exercise its rights under the law before any additional challenges are raised to the new ordinances adopted by the Borough.

CONCLUSION

For all of the foregoing reasons, the Borough's motion for reconsideration should be granted due to the fact that the Court was mistaken as to its ability to strike the offensive portions of the Ordinances when it granted the DOT's motion. Alternatively, the Court should enter a stay of the Order to permit the Borough to submit the Ordinances to the DOT for review and approval.

Respectfully submitted,

Ruby Kumar-Thompson

RUBY KUMAR-THOMPSON, ESQ.

cc: Jacqueline Rosa, Esq. (via eCourts filing)
Phillip J. Espinoza, Esq. (via eCourts filing)
Brian Chewcaskie, Esq.

EXHIBIT LL

SEIGEL LAW LLC
Attorney ID: 09372010
505 Goffle Road
Ridgewood, New Jersey 07450
Attorney for Plaintiffs
(201) 444-4000

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, et al,

Defendant,

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

Plaintiff,

v.

BOROUGH OF LEONIA, et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-607-18

Civil Action

ORDER

THIS MATTER having been opened to the Court upon the application of counsel for Plaintiff, and on notice to all counsel of record, and the Court having considered the moving papers, and any opposition thereto, and good cause having been shown,

IT IS on this 12 day of October, 2018,

ORDERED that Plaintiff shall be and is hereby granted leave to file and serve an Amended Complaint to include the new Ordinances,

ORDERED that plaintiffs shall file and serve the Amended Complaint within 7 days of its receipt of this Order; and it is further

ORDERED that Defendants, shall file an Answer or otherwise responsive pleading, within 20 days of service of the Amended Complaint and this Order; and it is hereby further

ORDERED that Sanctions, attorney's fees, and costs of litigation are denied without prejudice for the reasons placed on the record on October 12, 2018.

Uploaded on eCourts.

Hon. Peter F. Bariso, Jr., A.J.S.C.

Opposed

EXHIBIT MM

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
25 Market Street
P.O. Box 114
Trenton, New Jersey 08625
Attorney for the State of New Jersey
Department of Transportation
By: Philip J. Espinosa (Attorney ID No.: 030311988)
Deputy Attorney General
(609) 376-3300

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,	:	
Plaintiff,	:	Civil Action
v.	:	
BOROUGH OF LEONIA, ET AL.,	:	
Defendants.	:	**ORDER GRANTING LEAVE TO FILE AMENDED COMPLAINT**
STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION,	:	
Plaintiff-Intervenor,	:	
v.	:	
BOROUGH OF LEONIA, NEW JERSEY,	:	
Defendant.	:	

This matter having been opened to the court by a motion for leave to file an amended complaint by Gurbir S. Grewal, Attorney General of New Jersey, by Philip J. Espinosa, Deputy Attorney General, attorney for the plaintiff-intervenor State of New Jersey Department of Transportation ("DOT"), and the court having considered this matter, and for good cause having been shown;

IT IS on this 12th day of October, 2018, ORDERED:

1. The DOT within seven days of the entry of this order may file an amended complaint in the form annexed to the DOT's motion for leave to file an amended complaint.

2. The DOT's filing of its amended complaint on eCourts shall act as service of process upon the parties in this case.

3. The parties to this action shall have 20 days from the date of the entry of this order in which to serve an answer or otherwise plead with respect to the amended complaint of the DOT.

4. Reasons placed on the record on October 12, 2018.

Opposed

Hon. Peter F. Bariso, Jr., A.J.S.C.

EXHIBIT NN

Cleary Giacobbe Alfieri Jacobs, LLC
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Gittleman Muhlstock & Chewcaskie
Brian M. Chewcaskie, Esq. (Attorney ID No. 021201984)
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(201)944-2300
Attorneys for Defendants

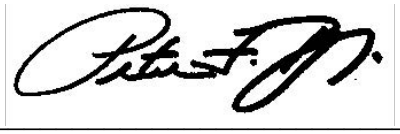
JACQUELINE ROSA, Plaintiff, v. BOROUGH OF LEONIA, et al., Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION, CIVIL PART HUDSON COUNTY DOCKET NO.: HUD-L-607-18 Civil Action **ORDER DENYING RECONSIDERATION AND AMENDING ORDER DATED AUGUST 30, 2018 GRANTING SUMMARY JUDGMENT TO THE N.J. DEPT. OF TRANSPORTATION**
STATE OF N.J. DEP'T OF TRANSPORTATION, Plaintiff/Intervenor, v. BOROUGH OF LEONIA, N.J., Defendant.	

THIS MATTER having been brought before the Court upon the application of Cleary Giacobbe Alfieri Jacobs, LLC, and Brian Chewcaskie, Esq. as the attorneys for Defendant Borough of Leonia ("the Borough"), for an Order reconsidering and for a partial stay of the Order dated August 30, 2018 granting summary judgment in favor of Plaintiff/Intervenor State of New Jersey Department of Transportation ("the DOT") and the Court having considered the papers and arguments in support of and in opposition to the motion, and it appearing to the Court in the interests of justice:

IT IS on this 12th of October, 2018,

ORDERED that the Borough's Motion for Reconsideration of the Order dated August 30, 2018 and for a stay of the court's ruling is hereby denied for the reasons stated in the attached opinion.

Uploaded in eCourts.



Hon. Peter F. Bariso, Jr., A.J.S.C.

__X_ Opposed
____ Unopposed

NOT FOR PUBLICATION WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
HUDSON COUNTY
LAW DIVISION
DOCKET NO. HUD-L-607-18

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, BOROUGH OF LEONIA COUNCIL, TOM ROWE, in his capacity as acting Borough Clerk of the Borough of Leonia, and JUDAH ZEIGLER, in his official capacity as Mayor of the Borough of Leonia,

Defendants.

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Plaintiff/Intervenor,

v.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

CIVIL ACTION

OPINION

ARGUED: October 12, 2018

DECIDED: October 12, 2018

Jacqueline M. Rosa, Esq., pro se plaintiff.

Brian M. Chewcaskie, Esq. co-counsel for defendants (Gittleman Muhlstock & Chewcaskie, LLP, attorneys).

Ruby Kumar-Thompson, Esq. co-counsel for defendants (Cleary, Giacobbe,

Alfieri, Jacobs, LLC., attorneys).

Deputy Attorney General Philip J. Espinosa for plaintiff/intervenor (State of New Jersey, Office of the Attorney General, attorneys).

Bariso, A.J.S.C.

Factual Background and Procedural History

This motion comes in response to this court's August 30, 2018 order granting summary judgment to plaintiff/intervenor the State of New Jersey Department of Transportation ("DOT").[1] Defendant Borough of Leonia ("Leonia") requests this court reconsider the summary judgment or, in the alternative, stay the summary judgment order and allow Leonia to cure the procedural infirmities by passing new ordinances and receiving DOT approval.

In the fall of 2017, Leonia enacted a series of ordinances to address traffic issues. Specifically, on December 4, 2017, Leonia's Council adopted Ordinance No. 2017-17, which added "Closing of Certain Streets" and Section 194-49, Schedule XVII "Streets Closed to Traffic" to Leonia's Code. (Leonia Ex. C.)

On January 17, 2018, the Council adopted Ordinance No. 2018-2, which established a $200 penalty or imprisonment for up to 15 days for anyone convicted of violating Section 194-25.1, which was first established under Ordinance 2017-19. (Leonia Ex. D.)

On March 5, 2018, the Council adopted Ordinance 2018-5, which repealed Ordinance No. 2017-19 and supplanted Sections 194-25.1 and 194-49, Schedule XVII to the Code. (Leonia Ex. E.)

Before Ordinance No. 2018-5 was enacted, on January 30, 2018, plaintiff Jacqueline Rosa ("Rosa") filed a complaint in lieu of prerogative writs against Leonia, Leonia Council, Tom

[1] There were other orders entered into after the August 30, 2018 oral argument but Leonia is only contesting this order.

Rowe, and Judah Zeigler (collectively, "Defendants"). The complaint challenged the amendments made to Leonia's Code, Sections 194-25.1 and 194-25.2. On February 12, 2018, plaintiff filed an amended complaint. On March 27, 2018, defendants filed an answer and affirmative defenses.

On May 4, 2018, Rosa applied for an order to show cause, seeking preliminary injunction against enforcement of Leonia Code Sections 194-25.1 and 194-25.2 as amended by Ordinance No. 2018-5. This court heard oral argument on May 25, 2018 and denied Rosa's application for a preliminary injunction.

On June 8, 2018, a consent order was entered to allow DOT to intervene. On June 11, 2018, DOT filed a complaint for declaratory judgment and action in lieu of prerogative writs. On July 2, 2018, Leonia filed an answer to DOT's complaint. The discovery end date is May 24, 2019.

On July 11, 2018, DOT filed a motion for summary judgment and on July 16, 2018, Rosa filed for summary judgment. (DOT Ex. C.) Defendants opposed both motions and filed a cross-motion to the DOT's motion, seeking dismissal of the complaints based on the pleadings.

On August 30, 2018, this court heard oral arguments on all three motions and denied the defendants' cross-motion and denied Rosa's motion. This court granted DOT's motion declaring Ordinances Nos. 2017-9, 2018-2, and 2018-5 null and void and legally invalid. This court stated its reasons on the record, stating, (1) the Ordinance impacted Grand Avenue, a state road; (2) thus, the Ordinance was subject to N.J.S.A. 39:4-8(a), requiring approval by DOT; (3) the DOT did not approve the ordinance. During oral argument, defendants argued that this court could and should only invalidate the portions that impact Grand Avenue.

Subsequent to the August 30, 2018 order granting summary judgment to DOT, Leonia

introduced two revised Ordinances to regulate street closures. On September 17, 2018, those Ordinances, Nos. 2018-14 and 2018-15, passed after a second reading. All neighboring municipalities received notice of both Ordinances before adoption and Leonia will be submitting Ordinance No. 2018-15 to DOT for approval.

Leonia's Arguments in Support of Motion to Reconsider

POINT I – The court should reconsider its summary judgment order in favor of DOT.

There was clear error in the court's decision because discovery was not complete when the order was entered and the order invalidating all three ordinances in their entirety is overbroad. (Leonia Br. 6.) Also, the interests of justice and Leonia residents were not served by the court's refusal to grant Leonia a stay to cure the procedural errors by giving notice to DOT. Thus, Leonia's Motion for Reconsideration should be granted. (Leonia Br. 6.)

POINT II – The court's finding of an "impact on a state highway" was premature.

In invalidating the Ordinances, this court made a factual finding that "since you cannot turn off a state highway, you are impacting the state roadway." (Leonia Ex. B, T23:5-24-7.) In doing so, the court presumed that the prohibition against turning for non-residents and those persons who are not travelling to a location within Leonia would "back up traffic" on a state highway. Therefore, the Ordinances triggered N.J.S.A. 39:4-8(a), which invalidates any such ordinance absent DOT approval. (Leonia Br. 6.) So, the court construed "impact on a state highway" to be analogous to preventing vehicles from turning onto Leonia's side streets from Grand Avenue.

In deciding motions for summary judgment, a court cannot resolve issues of fact unless the party resisting such motion has an opportunity to complete discovery that is relevant and material to defense of the motion. See Velantzas v. Colgate-Palmolive Co., Inc., 109 N.J. 189,

193 (1988); Wellington v. Estate of Wellington, 359 N.J. Super. 484, 496 (App. Div.), certif. denied, 177 N.J. 493 (2003) (holding that summary judgment is generally "inappropriate prior to the completion of discovery"). In order to defeat a motion for summary judgment on the basis that it is premature, a party must demonstrate with some specificity the discovery sought and its materiality. Mohamad v. Iglesia Evangelica Oasis De Salvacion, 424 N.J. Super. 489, 499 (App. Div. 2012); see also Auster v. Kinioian, 153 N.J. Super. 52, 56 (App. Div. 1977).

A trial court should not resolve factual disputes on a motion for summary judgment if a rational fact-finder could go either-way following presentation of the evidence at trial on the merits. See Gilhooley v. County of Union, 164 N.J. 533, 545-46 (2000).

Legislative intent is a matter for the fact finder to determine. When a plain reading of a statute suggests "more than one plausible interpretation," the fact finder may consider extrinsic evidence in search of the legislature's intent. Tumpson v. Farina, 218 N.J. 450 (2014 (*quoting* DiProspero v. Penn, 183 N.J. 477, 492-93 (2005)). When an issue turns on the interpretation of terms that have more than one plausible meaning, the court should leave the doubtful provision to the fact finder to decide after a trial. Driscoll Constr. Co., Inc., v. Dep't of Transp., 371 N.J. Super. 304, 314 (App. Div. 2004).

In Driscoll, the Appellate Division held that the trial judge erred in refusing to consider evidence of the surrounding circumstances of a contract when granting summary judgment on the issue of contract interpretation. Driscoll, 371 N.J. Super. at 316, 318. Because a reasonable trier of fact might conclude that DOT's prior practices provided objective evidence of what the parties intended, Driscoll's reliance upon the prior practice based on identical language in the Crisdel contract should have been considered. Id. at 317. Thus, plaintiffs were at minimum entitled to complete discovery before summary judgment was granted. Id. at 318.

Here, the interpretations of "impact" and "undue impact," when the legislature set forth the standards under which approval of an ordinance may be denied, are susceptible to more than one interpretation. (Leonia Br. 8.) As such, discovery should have been afforded to Leonia to determine the implications of the ordinances and whether they affected state roadways. The discovery end date for this matter is May 24, 2019 and no discovery was conducted prior to this court's entry of summary judgment in favor of DOT on August 30, 2018. Inasmuch as this court based its order on the opinion of Mark Hiestand, the DOT traffic engineer, Leonia should have been afforded discovery in his opinions. (Leonia Br. 9.) A deposition of Mr. Hiestand may have determined whether DOT has rendered similar opinions regarding traffic restrictions in other municipalities and whether Mr. Hiestand is credible to render such opinions.

Furthermore, as in Driscoll, evidence of DOT's past practice with respect to other municipal traffic controls along a state highway may be relevant to what the State Legislature intended when it removed DOT oversight from local traffic legislation except for those impacting state highways. (Leonia Br. 9.) DOT's past practice would also be relevant in determining when the legislature required a finding of "undue impact" as the reason for withholding DOT approval in the fourth paragraph of N.J.S.A. 39:4-8(a). N.J.S.A. 39:4-8(a) requires a finding after an investigation by the DOT of an undue impact. Therefore, Leonia is entitled to discovery to defend their argument that the ordinances' impact on a state highway alone does not invalidate an ordinance absent approval from the Commissioner. (Leonia Br. 9-10.) The evidence gathered in discovery may show that DOT never required submission of other similar ordinances that regulated traffic on streets abutting state highways. This discovery may shed light on how the statute has been interpreted by the DOT in the past, and thus, how it should be interpreted in this case. Defendants have been deprived of obtaining such evidence and,

therefore, the court's grant of summary judgment was improvident. (Leonia Br. 10.)

POINT III – The court's order invalidating the Ordinances completely cannot be reconciled with its holding that only the traffic regulations with an impact on Grand Avenue required DOT approval.

Assuming DOT approval was required for any traffic regulations on streets located along a state highway, the court's order is overbroad because the subject Ordinances regulated many streets that have no impact on Grand Avenue, which is the only state highway in Leonia. (Leonia Br. 10.)

During oral argument, Leonia argued that ruling that regulating traffic impacting Grand Avenue without DOT approval is invalid cannot be a basis for completely invalidating all three Ordinances. However, the court rejected Leonia's argument and invalidated the Ordinances entirely, stating, "we don't get to pick and choose what part of the ordinance is enforceable and which isn't." (Leonia Ex. B, T21:15-22:1). This court ruled that the regulation of traffic controls impacting Grand Avenue is governed by N.J.S.A. 39:4-8(a) and because Commissioner approval had not been obtained, the Ordinance Nos. 2017-19, 2018-2, and 2018-5 were null and void and legally invalid as a matter of law. The court made no distinction between streets abutting Grand Avenue and other streets throughout Leonia.

This court's ruling ignores the fact that most streets listed in Ordinance No. 2018-5 do not impact Grand Avenue. The court construed "impact" to a state highway to mean "preventing traffic from turning onto Leonia's side streets along" Grand Avenue. Thus, the court should have only invalidated those streets adjacent to Grand Avenue.

The court ignored well-established case law that, "where the provisions of an ordinance are separable, the invalidity of one of the separable parts will not invalidate the entire ordinance." See Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472, 477 (1956), citing

Scharf v. Recorder's Court of Ramsey, 137 N.J.L. 231 (Sup.Ct. 1948), aff'd, 1 N.J. 59 (1948). This is especially true where an ordinance contains a severability clause, such as in the matter at bar, because there is a rebuttable presumption of severability. State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983). Moreover, "the cardinal principle of statutory construction must be to save and not to destroy, and the duty of the court is to strain if necessary to save an act or ordinance, not to nullify it." Sea Isle City v. Caterina, 123 N.J. Super. 422, 428 (Law Div. 1973); see Dome Realty, Inc. v. City of Paterson, 83 N.J. 212, 235 (1980) (holding that an ordinance is entitled to a presumption of validity.) Thus, it is well-settled that the invalidity of one of the separate parts does not render the entire ordinance invalid, provided the remainder contains the essentials of a complete enactment. United Property Owners Association of Belmar v. Borough of Belmar, 343 N.J. Super. 1, 39 (App. Div. 2001), certif. denied, 170 N.J. 390 (2001). Therefore, if an ordinance includes unconstitutional provisions, it nonetheless can survive with the invalid provisions stricken therefrom. News Printing Co. v. Borough of Totowa, 211 N.J. Super. 121, 168 (Law Div. 1986); see also Levine v. Mayor of the City of Passaic, 233 N.J. Super. 559 (Law Div. 1988).

The issue of whether severability is reasonable focuses on both legislative intent of the enacting body and whether the objectionable feature of the ordinance can be excised without substantial impairment of the principal object of the statute. New Jersey State Chamber of Commerce v. New Jersey Election Law Enforcement Comm'n, 82 N.J. 57, 75 (1980); United Property, supra, (*citing* Affiliated Distillers Brands Corp. v. Sills, 60 N.J. 342, 345 (1972)).

Here, Ordinance No. 2018-5 contained a severability clause, which permitted the court to invalidate the Ordinance in respect to only those streets that were adjacent to Grand Avenue. Once those streets were stricken, the rest of the Ordinance would have been enforceable. The

court should have blue-penciled the Ordinance to delete only those portions of Section 194-49 that referred to Grand Avenue. (Leonia Br. 13; Leonia Ex. I)

If, upon reconsideration, the court strikes only the portions of Section 194-49 that regulate traffic impacting Grand Avenue, the court must also reinstate Ordinance 2018-2, which establishes penalties for violating Section 194-25.1 and Section 194-49. Also, this penalty provision can and should remain in full force and effect because Leonia enacted new Ordinances on September 17, 2018.

POINT IV – If the court does not reconsider its August 30, 2018 order granting summary judgment to DOT entirely, the court should enter a stay of the order based on Leonia's enactment of two new ordinances to address the court's concerns with N.J.S.A. 39:4-8(a).

If a government entity takes action that is later determined to be procedurally defective, curative measurements may be adopted to validate the prior action retroactively. IMO Certain Amendments to the Adopted and Approved Solid Waste Management Plan of the Hudson County Solid Waste Management District, 133 N.J. 206 (1993). As a corollary, a municipality has a right to ratify its actions tainted by procedural irregularities, as such irregularities do not invalidate ordinances. See Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. 129, 158-159 (1977).

A court may stay the entry of summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action. Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002). Similarly, a stay of a judgment declaring an ordinance invalid based on a procedural defect is appropriate to afford the municipality the opportunity to correct the infirmity. See Levin v. Parsippany-Troy Hills Tp., 82 N.J. 174 (1980); Pop Realty Corp. v. Springfield Bd. of Adjustment of Springfield Tp., 176 N.J. Super. 441 (Law Div. 1980). For example, in Pop Realty, the court entered judgment finding an ordinance invalid, but stayed the

judgment to allow the municipality time to adopt a new ordinance that satisfied certain statutory requirements.

After the court's August 30, 2018 order, Leonia proposed two revised Ordinances to regulate street closures. On September 17, 2018, those revised Ordinances passed on second reading. Ordinance No. 2018-14 does not require DOT approval because it pertains to streets other than Grand Avenue. Ordinance No. 2018-15 requires DOT approval based on this court's ruling because it pertains to streets intersecting Grand Avenue and Bergen Boulevard. Leonia will be submitting Ordinance No. 2018-15 to DOT for approval. (Leonia Br. 15.)

If this court does not reconsider its August 30, 2018 Order granting summary judgment to DOT, it should enter a stay of that order to give Leonia time to cure the prior procedural defects and submit Ordinance No. 2018-15 to DOT for approval. If DOT approval is forthcoming, use of signage enjoined by the order would be authorized. (Leonia Br. 15-16.)

DOT'S ARGUMENTS IN OPPOSITION

POINT I – Because Leonia had adopted the new ordinances, which supersede and replace the old ordinances, Leonia's motion for reconsideration and for a stay is moot and should be denied as a matter of law.

It is well established that issues rendered moot by subsequent developments are outside the proper realm of the courts. (DOT Br. 5.) New Jersey's courts consider an issue moot when "the decision sought in a matter, when rendered, can have no practical effect on the existing controversy." Greenfield v. N.J. Dep't of Corr., 382 N.J. Super. 254, 257-58 (App. Div. 2006) (quoting N.Y. Susquehanna & W. Ru. Corp. v. N.J. Dep't of Treasury, Div. of Taxation, 6 N.J. Tax 575, 582 (Tax 1984)).

After this court's August 30, 2018 order for summary judgment, Leonia adopted two new ordinances. The new ordinances supersede and replace the old ordinances and the substantive

provisions of the new ordinances control. Therefore, Leonia's motion for reconsideration and for a stay is moot and should be denied as a matter of law. (DOT Br. 6.) See City of Camden v. Whitman, 325 N.J. Super. 236, 243 (App. Div. 1999).

POINT 2 – Because this court properly granted the DOT's motion for summary judgment, Leonia's motion for reonsideration should be denied.

Rule 4:49-2 governs motions for reconsideration and states that the motion "shall state with specificity the basis on which it is made, including a statement of matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred." The decision to grant or deny a motion for reconsideration rests within the discretion of the trial court. Capital Fin. Co. of Delaware Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008).

Reconsideration should be used only where (l) the court has expressed its decision based upon a palpably incorrect or irrational basis or (2) it is obvious that the court either did not consider or failed to appreciate the significance of probative, competent evidence. Ibid. (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Motions for reconsideration should not be used "merely because of dissatisfaction with a decision of the Court." D'Atria v. D'Atria, 242 N.J. Super. at 401. In addition, Rule 4:49-2 "is not the vehicle for raising a new issue." See Naik v. Naik, 399 N.J. Super. 390, 395 (App. Div. 2008).

A – This court correctly analyzed the plain language of the applicable law and of the old ordinances in granting summary judgment

In interpreting a statute, the goal is to give effect to the Legislature's intent and the best indicator of that intent is the statutory language. DiProspero v. Penn, 183 N.J. 477, 492 (2005). If the plain language leads to a clear and unambiguous result, the interpretive process should end, without resort to extrinsic sources. Ibid.

The Transportation Act of 1966 ("Transportation Act") authorizes the DOT Commissioner to develop and promote efficient transportation services and coordinate with other public entities. N.J.S.A. 27:1A-5. The DOT is also responsible for promoting an "efficient, fully integrated and balanced transportation system" throughout New Jersey. N.J.S.A. 27:1A-1. Pursuant to N.J.S.A. 39:4-8(a),

> "[e]xcept as otherwise provided in this section, no ordinance, resolution, or regulation concerning, regulating, or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the commissioner, according to law."

The DOT Commissioner is not required to approve any ordinance unless, after investigation by the Commissioner, the same appears to be "in the interest of safety and the expedition of traffic on the public highways." N.J.S.A. 39:4-8(a).

Municipalities may adopt traffic ordinances without the DOT Commissioner's approval only for those traffic measures listed in either N.J.S.A. 39:4-197 or N.J.S.A. 39:4-8(c), subject to the provisions of 39:4-138. For example, municipalities may alter speed limitations and regulate street parking.

Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal ordinance which places any impact on a state highway requires the approval of the DOT commissioner. "Impact on a state highway" or "impact to a state highway" is defined by N.J.A.C. 16:27-2.1, to mean any traffic control device on a non-state highway that is proposed for installation or any traffic regulation applicable to a non-state highway: (1) at a state highway intersection; (2) within 500 feet of a state highway; or (3) at a distance greater than 500 feet from a state highway but has a resultant queue that extends within 500 feet or less from a state highway. (DOT Br. 9.)

Here, when granting summary judgment, this court analyzed the plain language of the applicable law and the old ordinances. In applying N.J.S.A. 39:4-8(a) to the old ordinances, there was no dispute regarding the content of the old ordinances. Additionally, this court properly determined that the plain language of the old ordinances revealed an impact on a state roadway. It was factually undisputed that Leonia failed to submit the old ordinances to the DOT Commissioner for approval. (DOT Br. 10.)

Contrary to Leonia's argument, Driscoll Constr. Co. v. State, is not applicable here. Driscoll, 371 N.J. Super. 304 (App. Div. 2004). In Driscoll, the court addressed a contract dispute between the DOT and a contractor arising out of a highway project. Id. at 307-18. Unlike in Driscoll, this court granted summary judgment based on the plain language of a statute, N.J.S.A. 39:4-8, and of the old ordinances themselves; there was no contract at issue here. Also, even if this court did find Driscoll analogous, N.J.S.A. 39:4-8 and the ordinances were not ambiguous, so there was no need for additional evidence to aid in interpretation. See DiProspero, 183 N.J. at 492 (stating if the plain language leads to a clear and unambiguous result, the interpretive process should end, without resort to extrinsic sources). Accordingly, Driscoll is not applicable.

Additionally, Leonia confuses the "undue traffic burden or impact" language of N.J.S.A. 39:4-8 with the "any impact" language of N.J.S.A. 39:4-8(a), as defined in N.J.A.C. 16:27-2.1. Contrary to Leonia's argument, N.J.S.A. 39:4-8(a) provides that, "Notwithstanding any other provision of this section to the contrary, any municipal . . . ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner." Clearly, Leonia is misconstruing the statute.

B – This court properly determined there were no issues as to any material facts and that summary judgment was appropriate as a matter of law.

Actions in lieu of prerogative writs vest courts with jurisdiction to review de novo the actions of municipal agencies to ensure they are acting within their jurisdiction and according to law. Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998). The interpretation of an ordinance is purely a legal matter as to which an administrative agency has no particular skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987).

This action in lieu of prerogative writs was ripe for summary judgment because the court had jurisdiction to review Leonia's actions to ensure that Leonia was acting within its jurisdiction and according to law. Based on an analysis of the applicable statutes within Title 39 and the language of the old ordinances, discovery was not necessary for this court to properly determine the ordinances were legally invalid. (DOT Br. 12.)

Moreover, the certification of DOT traffic engineer, Mark Hiestand, described the old ordinances' impact on a state roadway, pursuant to the applicable regulation, N.J.A.C. 16:27-2.1. Mr. Hiestand's Certification stated that the old ordinances impacted the state highway because the old ordinances (a) impacted a state highway at State Route 93 (Grand Avenue); and (b) impacted traffic within 500 feet of State Route 93 because Leonia has installed signs on the aforementioned municipal streets adjacent to the state highway. (DOT Br. 13; Ex. C.)

Additionally, DOT submitted their statement of material facts via eCourts on July 11, 2018. (DOT Ex. C.) Leonia had almost six weeks to provide admissible evidence to dispute those facts before filing a brief and supporting papers on August 21, 2018. Despite this, Leonia simply stated, "Denied" in response to paragraph 7 of DOT's statement of material facts. As such, Leonia did not specifically dispute paragraph 7 with a citation demonstrating the existence of a genuine issue to the facts in conformance with Rule 4:46-2(a).

Therefore, the material facts included within paragraph 7 of DOT's statement of material facts, which includes the ways the ordinances impact the state highway, were deemed admitted for purposes of the DOT's motion, pursuant to Rule 4:46-2(b).

C – Leonia's new ordinances are not relevant to this motion for reconsideration.

Leonia's attempt to raise the issue of its adoption of new ordinances is not relevant to this motion because the new ordinances were not the subject of DOT's motion for summary judgment on August 30, 2018. Rule 4:49-2 is not the vehicle for raising this new issue. See Naik v. Naik, 339 N.J. Super. at 395.

POINT 3 – Because the old ordinances placed an impact on a state highway, pursuant to N.J.S.A. 39:4-8(a), Leonia was required to submit the ordinances in their entirety to the DOT Commissioner for approval.

As a threshold manner, because Leonia had adopted the new ordinances, Leonia's motion for reconsideration and a stay is moot. Also, this court properly granted the DOT's motion for summary judgment, pursuant to N.J.S.A. 39:4-8(a) because the statute's plain language requires approval of any ordinance, as a whole, by the DOT commissioner if the ordinance places an impact on a state roadway. (DOT Br. 15.)

When DOT Commissioner's approval is required, N.J.S.A. 39:4-8(a) details the DOT review process. Given the statutorily required process, the old ordinances did not present an opportunity for "judicial pruning" and Leonia's argument regarding severability is incorrect as a matter of law. Instead, Leonia should have submitted the ordinances to the DOT and, if unhappy with the DOT's decision, Leonia could have filed a direct appeal to the Appellate Division, pursuant to Rule 2:2-3(a)(2). (DOT Br. 16.)

Additionally, the cases on which Leonia relies in for severability do not address Title 39, nor do they address traffic ordinances in the context presented in our cases. The cases cited by

Leonia are distinguishable because they address severability in the constitutional and zoning contexts. As such, those cases are not applicable here. (DOT Br. 17.)

The question of whether an invalid provision may be considered severable turns on both legislative intent and "whether the remaining provisions are functionally self-sufficient as containing the essentials of a complete enactment." State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983) (quoting Gross v. Allan, 37 N.J. Super. 262, 269 (App. Div. 1955)). The remaining provisions of the ordinance must be legally valid and also fulfill the legislative intent for severability to be proper. (DOT Br. 17.)

Contrary to Leonia's argument, this court properly found that the old ordinances were legally invalid as a matter of law because they placed an impact on a State roadway and were never submitted to the DOT for approval in accordance with N.J.S.A. 39:4-8(a). This court properly refused to sever the ordinances because if severed, the remaining provisions would not be functionally self-sufficient and would not contain the essentials of a complete enactment.

POINT 4 – Leonia's stay application should be denied because Leonia cannot demonstrate any of the criteria necessary for such extraordinary relief.

The rest for granting injunctive relief, such as a stay of a court order, is well-established. The party seeking relief must demonstrate the existence of: (1) a clear probability it will succeed on the merits of the underlying controversy; (2) its legal rights are based on settled law; (3) in the absence of a stay, the movant will suffer irreparable injury; and (4) the probability of harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). See also Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (holding applications for stay pending appeal are governed by the Crowe standard).

Leonia did not address any of the Crowe factors in seeking a stay. Even if they had, they

cannot meet this high standard to afford it injunctive relief so Leonia's request for a stay should be denied. (DOT Br. 19.)

Leonia cannot show a reasonable probability of success on the merits.

To prevail on an application for injunctive relief, an applicant must show a reasonable probability of success on the merits. Crowe, 90 N.J. at 133. Courts examine whether the movant has "demonstrated that the material facts favored in its position . . . and, also, whether the law upon which [the movant's] claim is based on is well settled." Waste Mgmt. of N.J. v. Union Cty. Utils. Auth., 399 N.J. Super. 508, 528 (App. Div. 2008).

Leonia has not satisfied this burden. As discussed in Point I, Leonia's arguments concerning the old ordinances are moot as a matter of law. Therefore, Leonia cannot make a preliminary showing of ultimate success on the merits. Also, despite the old ordinances' impact on a state roadway, Leonia failed to seek the DOT Commissioner's approval of those ordinances. (Leonia Br. 20.)

Accordingly, this court properly determined the old ordinances were legally invalid and Leonia cannot establish a reasonable probability of success on the merits.

Leonia cannot show that it will be irreparably harmed or that any harm to it will be greater than the harm to the DOT or the public if the stay were not granted.

Leonia cannot show that it will suffer irreparable harm, let alone harm exceeding that to the DOT and motoring public, if the stay is not granted. Crowe, 90 N.J. at 132-34.

Any harm that Leonia alleges is moot because the new ordinances supersede and replace the old ordinances. Therefore, there is no harm for denying a stay because the stay would affect only the old ordinances, which have been replaced.

Additionally, Leonia as not alleged any irreparable harm in its motion papers. Instead, Leonia suggests that a stay should be granted to afford it an opportunity to cure prior procedural

defects. However, the question of the new ordinances' legal validity is not properly before the court at this time. (Leonia Br. 21.)

Further, the harm to DOT and the motoring public outweighs any alleged harm that Leonia could suffer. If the stay were entered, Leonia would be free to enforce the old and/or new ordinances, contrary to the express provisions of Title 39. Also, if municipalities across the state were deemed to have such legal authority to adopt similar ordinances, we could reasonably anticipate the potential traffic problems. (DOT Br. 21.)

Accordingly, Leonia's request for a stay should be denied.

ROSA'S OPPOSITION TO MOTION

Plaintiff Rosa relies on and joins the opposition submitted by DOT.

LEONIA REPLY IN SUPPORT OF MOTION

POINT I – The motion for reconsideration is not rendered moot by Leonia's adoption of ordinances revising one of the three original ordinances that were the subject of DOT's complaint and were under review on its motion for summary judgment.

DOT glosses over this court's limited holding. DOT mentions that its complaint challenged three ordinances, including one that did not regulate traffic, and that this court's ruling was limited to Ordinance No. 2018-5, insofar as it included streets that impacted traffic on Grand Avenue, for which no approval from the Commissioner was sought. In doing so, DOT contends the revised ordinances supersede and replace the old ordinances, but that is not the case. The revised ordinances, on their face, indicate that they are revisions of the old ordinances, 2017-19 and 2018-5. The adoption of the new ordinances did not replace the old ordinances, nor does it preclude Leonia from seeking to clarify the court's ruling through reconsideration. If the new ordinances did replace the old ordinances, the DOT would not have sought to amend its now-adjudicated complaint with counts one through five in their proposed amended complaint,

which challenge the old ordinances.

POINT II – The DOT's assertion that Rule 4:49-2 sets the standard of review on reconsideration is erroneous; as the rules and law cited by Leonia clearly set forth a loose standard given the interlocutory nature of the order.

Rule 1:7-4(b) stipulates that motions for reconsideration of interlocutory orders shall be determined pursuant to Rule 4:42-2, which provides that a court may reconsider an order that does not adjudicate all of the parties' claims in its sound discretion in the interests of justice, such as where a court recognizes a clear error in the earlier decision. See Ahktar v. JDN Properties at Florham Park, 439 N.J. Super. 391, 399-400 (App. Div.), certif. denied, 221 N.J. 566 (2015). There are no restrictions on the exercise of the power to revise an interlocutory order and the court can review or reconsider its interlocutory orders at any time prior to entry of final judgment. Lombardi v. Masso, 207 N.J. 517, 536 (2011) quoting Johnson v. Cyklop Strapping Corp., 220 N.J. Super. 250, 257 (App. Div. 1987), certif. denied, 110 N.J. 196 (1988).

DOT argues that the standard is Rule 4:49-2, but that applies to final orders only.

Point III – The court applied the incorrect standard when it granted DOT's motion for summary judgment because plaintiff did not have the opportunity to dispute the facts set forth by DOT.

DOT based its motion for summary judgment on Mark Hiestand's certification, which stated that the old ordinances impacted a state roadway, therefore implicating N.J.S.A. 39:4-9(a). Since DOT's motion was filed only nine days after Leonia filed its answer, this court applied the incorrect burden on Leonia to dispute the old ordinances' impact on a state roadway.

The New Jersey Supreme Court held that, when a "suit is in an early stage and still not fully developed, [the Court] ought to review a judgment terminating it now from the standpoint of whether there is any basis upon which plaintiff should be entitled to proceed further." Bilotti v. Accurate Forming Corp., 30 N.J. 184, 193 (1963).

When this court found the old ordinances impacted Grand Avenue, the state roadway, it did so without considering the ordinances may not have an impact on a state roadway. (See Leonia Ex. B, 70:14-19.) Instead of relying upon DOT's position, this court was supposed to determine if there can be "any basis" to allow the case to proceed. A traffic study may show, contrary to the DOT employee's certification, that the Ordinances do not impact Grand Avenue or any other state roadway.

Because this court applied the incorrect legal standard in its August 30, 2018 decision, the order was entered in error.

Point IV – Assuming the court properly found that all of the old ordinances had an "impact on a state highway," it nonetheless was not justified in invalidating the entirety of the original ordinances.

At oral argument, this court found that since a driver cannot turn off a state highway, the ordinances were impacting the state roadway. (Leonia Ex. B, 25:19-22.) This court relied on Mr. Hiestand's certification that the regulation of traffic at the intersections of Grand Avenue, including installing signs at those intersections, met the definition of "impact on a state highway" under DOT regulations. Based on this court's finding that some of the streets listed in the old ordinances impacted a state highway, the court invalidated the ordinances as a whole. This action was improper because the court should have allowed the old ordinances to stand to the extent the closed-off roadways do not impact a state highway.

Utilizing "judicial surgery", courts will sever ordinances when the invalid portion is independent and the remainder forms a complete act. Inganamort v. Borough of Fort Lee, 72 N.J. 412, 423 (1977). Since a portion of the ordinances can be maintained even if a portion of the ordinances are invalid, the court improperly held that all of the ordinances are invalid. Leonia requests this court reconsider the August 30, 2018 order and declare only those portions

of Ordinance 2018-5, which pertain to Grand Avenue, be invalid and stricken therefrom.

POINT V – If the court is not inclined to reconsider its order granting summary judgment, it should, nonetheless, enter a stay of that order to afford Leonia the opportunity to seek the approval of the DOT and, absent such happening, filing an appeal to the Appellate Division of any denial.

DOT has not refuted the cases cited by Leonia as precedent for a court to enter a stay of an order granting summary judgment based on invalidity of an ordinance to allow a municipality to take action to ratify prior action or correct an infirmity. See Town of Secaucus v. City of Jersey City, 20 N.J. Tax 384 (2002).

Although Leonia believes the old ordinances were valid and, with blue-lining, would withstand any challenge, it elected to adopt new ordinances to allow it the ability to seek DOT approval. Pursuant to N.J.S.A. 39:4-8(a), Leonia will seek approval of Ordinance No. 2018-15 within 30 days of its enactment, September 17, 2018. Nonetheless, Leonia wanted to allow the court the opportunity to correct its prior ruling and grant Leonia's "request for a stay while it considered its options." In light of case law, Leonia shall be afforded time to exercise its rights under the law before additional challenges are raised to the new ordinances.

For all of the foregoing reasons, Leonia's motion for reconsideration should be granted because the court should have blue-lined the offensive portions of the Ordinances when it granted the DOT's motion. Alternatively, Leonia requests a stay of the order to permit Leonia to submit the Ordinances to the DOT for review and approval.

LEGAL AUTHORITY

Rule 1:7-4. Findings by the Court in Non-Jury Trials and on Motions

> **(a)** Required Findings. The court shall, by an opinion or memorandum decision, either written or oral, find the facts and state its conclusions of law thereon in all actions tried without a jury, on every motion decided by a written order that is appealable as of right, and also as required by R. 3:29. The court shall thereupon enter or direct the entry of the appropriate judgment.
>
> **(b)** Motion for Amendment. On motion made not later than 20 days after service

of the final order or judgment upon all parties by the party obtaining it, the court may grant a rehearing or may, on the papers submitted, amend or add to its findings and may amend the final order or judgment accordingly, but the failure of a party to make such motion or to object to the findings shall not preclude that party's right thereafter to question the sufficiency of the evidence to support the findings. The motion to amend the findings, which may be made with a motion for a new trial, shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions that counsel believes the court has overlooked or on which it has erred. **Motions for reconsideration of interlocutory orders shall be determined pursuant to R. 4:42-2.**

Rule 4:42-2. Judgment upon multiple claims

If an order would be subject to process to enforce a judgment pursuant to R. 4:59 if it were final and if the trial court certifies that there is no just reason for delay of such enforcement, the trial court may direct the entry of final judgment upon fewer than all the claims as to all parties, but only in the following circumstances: (1) upon a complete adjudication of a separate claim; or (2) upon complete adjudication of all the rights and liabilities asserted in the litigation as to any party; or (3) where a partial summary judgment or other order for payment of part of a claim is awarded. In the absence of such direction, any order or form of decision which adjudicates fewer than all the claims as to all the parties shall not terminate the action as to any of the claims, and it shall be subject to revision at any time before the entry of final judgment in the sound discretion of the court in the interest of justice. To the extent possible, application for reconsideration shall be made to the trial judge who entered the order.

Rule 4:49-2. Motion to Alter or Amend a Judgment or Order

Except as otherwise provided by R. 1:13-1 (clerical errors) a motion for rehearing or reconsideration seeking to alter or amend a judgment or order shall be served not later than 20 days after service of the judgment or order upon all parties by the party obtaining it. The motion shall state with specificity the basis on which it is made, including a statement of the matters or controlling decisions which counsel believes the court has overlooked or as to which it has erred, and shall have annexed thereto a copy of the judgment or order sought to be reconsidered and a copy of the court's corresponding written opinion, if any.

N.J.S.A. 39:4-8. Commissioner of Transportation's approval required; exceptions

a. Except as otherwise provided in this section, no ordinance, resolution, or regulation concerning, regulating, or governing traffic or traffic conditions, adopted or enacted by any board or body having jurisdiction over highways, shall be of any force or effect unless the same is approved by the commissioner, according to law. The commissioner shall not be required to approve any such ordinance, resolution, or regulation, unless, after investigation by the commissioner, the same shall appear to be in the interest of safety and the expedition of traffic on the public highways. The commissioner's investigation need not include more than a review of the ordinance, resolution, or regulation,

and the supporting documentation submitted by a board or body having jurisdiction over highways, unless the commissioner determines that additional investigation is warranted.

Prior to the adoption of any municipal or county ordinance, resolution, or regulation, which places any impact on roadways in an adjoining municipality or county, the governing board or body of the municipality or county shall provide appropriate notice to the adjoining municipality or county.

Notwithstanding any other provision of this section to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner.

Where the commissioner's approval is required, a certified copy of the adopted ordinance, resolution, or regulation shall be transmitted by the clerk of the municipality or county, as applicable, to the commissioner within 30 days of adoption, together with: a copy of the municipal or county engineer's certification, a statement of the reasons for the municipal or county engineer's decision, detailed information as to the location of streets, intersections, and signs affected by the ordinance, resolution, or regulation, and traffic count, crash, and speed sampling data, when appropriate. The commissioner may invalidate the provisions of the ordinance, resolution, or regulation if the commissioner finds that the provisions of the ordinance, resolution, or regulation are inconsistent with the Manual on Uniform Traffic Control Devices for Streets and Highways, inconsistent with accepted engineering standards, are not based on the results of an accurate traffic and engineering survey, or place an undue traffic burden or impact on the State highway system, or affect the flow of traffic on the State highway system.

N.J.A.C. 16:27-2.1 Definitions

Impact on a State highway" or "impact to a State highway" means any traffic control device on a non-State highway that is proposed for installation:

1. At a State highway intersection;
2. Within 500 feet of a State highway; or
3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

"Impact on a State highway" or "impact to a State highway" shall also mean any traffic regulation applicable to a non-State highway:

1. At a State highway intersection;
2. Within 500 feet of a State highway; or
3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway.

DECISION

This court will address the arguments Leonia posed in its moving papers separately.

Rule 4:49-2 typically governs motions to reconsider. Motions submitted pursuant to Rule 4:49-2 should only be granted: (1) where the court's decision is based on a plainly incorrect or irrational reasoning; (2) when the court failed to consider evidence; or (3) there is good reason for it to consider new information. See Cummings v. Bahr, 295 N.J. Super. 374, 384-85 (App. Div. 1996). However, Rule 1:7-4(b) states that motions to reconsider interlocutory orders shall be determined pursuant to Rule 4:42-2. An interlocutory order is a provisional decision that does not dispose of every claim or party. Although there is debate on which rule shall apply here, this court will adopt Leonia's argument that Rule 4:42-2 applies because this court's August 30, 2018 order was interlocutory as it only determined part of the merits of DOT's claim and did not decide the merits of Ms. Rosa's claims.

Nonetheless, arguing the standard of review is *de minimis* because Leonia cannot show this court's ruling was a clear error, nor can Leonia show that the court failed to consider evidence. Therefore, Leonia has not shown "good cause" for this court to reconsider its August 30, 2018 order or that the "interests of justice" would be furthered by granting this motion. See Ahktar, 439 N.J. Super. at 399-400.

This court correctly analyzed the plain language of applicable law and the old ordinances in granting summary judgment. In interpreting a statute, the overriding goal is to give effect to the Legislature's intent. DiProspero v. Penn, 183 N.J. 477, 492 (2005) "[T]he best indicator of that intent is the statutory language"; therefore, it is the first place to look. Ibid.

Actions in lieu of prerogative writs vest courts with jurisdiction to review de novo the actions of municipal agencies to ensure they are acting within their jurisdiction and according to

law. Paruszewski v. Twp. of Elsinboro, 154 N.J. 45, 58 (1998). The interpretation of an ordinance is purely a legal matter as to which an administrative agency has no particular skill superior to the courts. Grancagnola v. Planning Bd. of Verona, 221 N.J. Super. 71, 75 (App. Div. 1987).

Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal ordinance which places any impact on a state highway requires the approval of the DOT commissioner. "Impact on a state highway" or "impact to a state highway" is defined by N.J.A.C. 16:27-2.1, to mean any traffic control device on a non-state highway that is proposed for installation or any traffic regulation applicable to a non-state highway: (1) at a state highway intersection; (2) within 500 feet of a state highway; or (3) at a distance greater than 500 feet from a state highway but has a resultant queue that extends within 500 feet or less from a state highway.

Although N.J.A.C. 16:27-2.1 defines terms for Chapter 27 of the Transportation Code, it is applicable to define the same terms used Title 39 of the New Jersey Statutes. The purpose of Chapter 27 of the Transportation Code is to "establish procedures for obtaining approvals for traffic regulations and traffic control devices [and] route restrictions for commercial motor vehicles on non-State highways." Therefore, the New Jersey Code and New Jersey Statutes should be read together and interpreted as a whole.

When granting summary judgment, this court found that the ordinances had an impact on a state highway, namely, Grand Avenue. The ordinances listed multiple streets that would be closed to non-residents and drivers not commuting to/from a Leonia destination. The ordinances included every street that is adjacent to Grand Avenue on its Eastern side, including: Moore Avenue, Ames Avenue, Sylvan Avenue, Highwood Avenue, Park Avenue, etc. Pursuant to

N.J.S.A. 39:4-8 and N.J.A.C. 16:27-2.1, any ordinance imposing traffic control devices or traffic regulations on those streets, by definition, places an impact on the state highway because they are "at a highway intersection."

Pursuant to Rule 4:46-2, summary judgment shall be granted when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Here, the ordinances, on their face, placed an impact on a state roadway, thus, subjecting the ordinances to N.J.S.A. 4-8(a), which requires DOT approval of such ordinances within 30 days of enactment. While there was some reference by Leonia that the ordinances in question were submitted to DOT, it was undisputed that Leonia never obtained approval of the ordinances from the DOT commissioner. Therefore, there was no genuine issue of material fact and it was clear that summary judgment was proper. Moreover, despite Leonia's argument, there was no need for further discovery to determine whether the ordinance impacted a state highway because the ordinances themselves delineated streets that statutorily defined that there was an impact.

Leonia cites to case law that stands for the proposition that a court should only invalidate those portions of an ordinance that are invalid and keep the rest of the ordinance. See Adams Newark Theatre Co. v. City of Newark, 22 N.J. 472, 477 (1956). However, the question of whether a court can sever an ordinance is twofold. It requires a look into the legislative intent and whether the remaining provisions are functionally self-sufficient and contain the essentials of a complete enactment. "The two criteria must coexist." Gross v. Allen, 37 N.J. Super. 262, 269 (App. Div. 1955). The entire ordinance should be completely invalidated when severance ruins the legislative intent. Boulevard Apartments, Inc. v. Hasbrouck Heights, 111 N.J. Super. 408, 417 (Law Div. 1970).

Pursuant to the numerous cases that Leonia cites in its moving brief, Leonia argues this

court should have blue-lined the ordinances and only invalidated the streets adjacent to Grand Avenue. However, none of the cases cited by Leonia are exactly on point because the cases do not deal with Title 39 or ordinances regulating traffic.

Moreover, severance is improper here because it severing the ordinances would alter their purpose because the remaining provisions would not be functionally self-sufficient or contain the essentials of a complete enactment. See State v. McCormack Terminal, Inc., 191 N.J. Super. 48, 52 (App. Div. 1983). If this court attempted to blue-line the ordinance to rid of the streets that impact Grand Avenue, very few streets would have remained, and those streets that did remain would not have been sufficient to fulfill Leonia's purpose for the ordinances: minimize traffic within the town. Therefore, despite the severability clauses, these ordinances could not properly be severed. Additionally, this court did not reach DOT's argument that the ordinances created no-through streets, which would have impacted any attempt to blue-line. Indeed, any right of Leonia to pass ordinances restricting the flow of traffic in a manner that creates "no through" streets could only have arisen by legislation, and there has been none. The power to designate "no through" streets is not among the powers granted by Leonia in Title 39, nor is such power granted by any other provision of our statutes.

Also, as DOT argues, N.J.S.A. 39:4-8(a) has a review process and requires the ordinances, in their entirety, be reviewed by the DOT Commissioner if there is an impact on a state roadway. Thus, the court would have been improper and overstepped its bounds if it chopped up the ordinance and left the parts that did not impact Grand Avenue.

Leonia argues that, if a government entity takes action that is later determined to be procedurally defective, curative measurements may be adopted to validate the prior action retroactively. IMO Certain Amendments to the Adopted and Approved Solid Waste Management

Plan of the Hudson County Solid Waste Management District, 133 N.J. 206 (1993).[2] As a corollary, a municipality has a right to ratify its actions tainted by procedural irregularities, as such irregularities do not invalidate ordinances. See Houman v. Mayor and Council of Borough of Pompton Lakes, 155 N.J. Super. 129, 158-159 (Law Div. 1977).[3]

The cases cited by Leonia are not analogous to these facts. Particularly, those cases do not deal with municipal ordinances, traffic ordinances, or the procedure to enact an ordinance. Instead, Leonia's cases discuss the Open Public Meeting Act and the Administrative Procedure Act.

As the DOT has expressed in its opposition, the test for granting injunctive relief, such as a stay, is well-established. The party seeking relieve must demonstrate (1) a clear probability it will succeed on the merits of the underlying controversy; (2) its legal rights are based on settled law; (3) in the absence of a stay, the movant will suffer irreparable injury; and (4) the probability of harm to other persons will not be greater than the harm the movant will suffer in the absence of such a stay. Crowe, 90 N.J. 132-34. See also Garden State Equality v. Dow, 216 N.J. 314, 320 (2013) (holding applications for stay pending appeal are governed by the Crowe standard).

Leonia would fail under Crowe because it cannot meet any of the factors and the factors were never addressed by Leonia in its moving papers.

Leonia cannot satisfy factors one or two. There is not a clear probability that Leonia will succeed on the merits because in the original hearing regarding the summary judgment motion, this court ruled against Leonia. Also, the case law Leonia cites is not analogous to these facts

[2] This case deals with a regulation administered by the Department of Environmental Protection, which should have been properly promulgated as a rule. The issues where whether the promulgation of the plan amendment and emergency waste flow redirection order was governed by the procedures prescribed by the Administrative Procedure Act, and whether the failure to comply with those procedures renders the amendment and order invalid and unenforceable.

[3] Improperly cited by Leonia as a Supreme Court case, instead of a law division case. Also, this case dealt with OPMA.

and this court found few cases citing directly to N.J.S.A. 39:4-8(a). Therefore, it's unlikely this area of the law is well-settled.

Notably, Leonia cannot satisfy the third factor because it was made moot when Leonia adopted new ordinances. Also, Leonia is not "suffering" from the volume of traffic on its roads – if anything, Leonia residents are simply required to leave for work or school a few minutes earlier to accommodate for the traffic. However, there is no tangible harm, other than Leonia residents potentially sitting in more traffic than they would if these ordinances were in place. Nevertheless, Leonia residents have been dealing with the high volume of cars drive through their town for years, which shows that no harm exists that would merit injunctive relief. Moreover, Leonia has not pled any harm will be or has been suffered; Leonia only claims it needs time to cure procedural defects. Such an argument does not require immediate relief.

Lastly, Leonia cannot prove the probability of harm to other persons will not be greater than the harm Leonia will suffer in the absence of such a stay. The numerous drivers who go through Leonia daily, and those drivers on the state road that was impacted by the ordinances, will suffer more harm from the stay being granted than Leonia will face if the request for a stay is denied. The absence of a similar ordinance controlling traffic has been the status quo forever. Therefore, there will be no harm to Leonia if this court kept the status quo by denying Leonia's request for a stay.

For the reasons stated above, Leonia's application for reconsideration and/or a stay is denied.

EXHIBIT OO

Seigel Law
PROTECTING THE INJURED

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October 12, 2018

VIA E-Courts & Lawyer's Service
Superior Court of New Jersey
Hudson County Superior Court Motion's Clerk
583 Newark Avenue
Jersey City, NJ 07306

Re: Rosa v. Leonia, et al.
HUD-L-0607-18

Dear Sir or Madam:

Enclosed please find the following:

0+1 Amended Complaint;
0+1 Order permitting to file an Amended Complaint dated October 12, 2018.

Thank you for your attention in this matter.

Respectfully submitted,
SEIGEL LAW LLC

.

JR/pd
Encl.

Jacqueline Rosa, Esq.

SEIGEL LAW FIRM LLC
Jacqueline Rosa – 009372010
505 Goffle Road
Ridgewood, NJ 07450
(201) 444-4000

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, et al,

Defendants.

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

Plaintiff,

v.

BOROUGH OF LEONIA, et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY

DOCKET NO. BER-L-0750-18

Civil Action

AMENDED COMPLAINT IN LIEU OF PREROGATIVE WRITS

Plaintiff, JACQUELINE ROSA (herein "Plaintiff"), residing in Edgewater, New Jersey, by way of Complaint against Defendants, alleges as follows:

NATURE OF ACTION

This is an action in lieu of prerogative writs challenging the validity of an ordinance enacted by the Borough of Leonia.

PARTIES

1. Plaintiff is an interested party affected by the enactment of Defendant, Borough of Leonia's Ordinance No. 2018-14 and Ordinance No. 2018-15. Plaintiff's right to travel on public streets

and freely enjoy public streets for the purpose of transportation have been denied, violated and infringed upon by the actions of the Defendants. Plaintiff is a resident of Edgewater, NJ, who commutes through Leonia on a weekly basis, to travel to and from her home. Plaintiff has standing to bring this action because this case involves a substantial public interest, and the Plaintiff has a private interest.

2. Defendant, Borough of Leonia ("Borough") is the municipality enacting ordinance Ordinance No. 2018-14 and Ordinance No. 2018-15 and infringing upon Plaintiff's rights.

3. The Defendant Borough of Leonia Council ("Council") is the governing body of the municipality and is responsible for enacting and passing municipal ordinances.

4. The Defendant, Tom Rowe ("Rowe"), was the acting Borough Clerk for the Borough of Leonia, and in that capacity in the official custodian of records.

5. The Defendant, Judah Zeigler, ("Zeigler")is the mayor of the Borough of Leonia and approved ordinance Ordinance No. 2018-14 and Ordinance No. 2018-15.

FIRST COUNT

CHALLENGE TO THE VALIDITY OF Ordinance No. 2018-14 and Ordinance No. 2018-15

6. Plaintiff repeats and realleges the statements in numbers 1-5.

7. On September 17, 2018, the Borough put into effect Ordinance No. 2018-14 and Ordinance No. 2018-15, which was signed by defendant Rowe and Zeigler and approved by the Council. This ordinance amends chapter 194 to include "temporary closing of streets."

8. The Ordinance specifically mandates that streets will be closed to the public during designated hours, unless that person is a resident of the specific streets, or needing access to his or her home within the Borough, or can name a business they are going to.

9. The Ordinance states that the streets will be closed daily from 6:00am to 10:00am and from 4:00pm to 9:00pm.

10. Any person who is not a resident of the Borough, or who cannot produce valid documentation will be fined two hundred dollars as listed in Ordinance No. 2018-16.

11. Ordinance No. 2018-14 and Ordinance No. 2018-15 violate Plaintiff's right to freedom of travel and are facially and presumptively invalid.

12. Ordinance No. 2018-14, Ordinance No. 2018-15 and Ordinance No. 2018-16 are arbitrary, capricious, and unreasonable.

13. The validity of Ordinance No. 2018-14, Ordinance No. 2018-15 and Ordinance No. 2018-16 are a matter of public interest rather than private interests and requires adjudication. Ordinance No. 2018-14, Ordinance No. 2018-15 and Ordinance No. 2018-16 cause a continuing public harm to travel.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14, Ordinance No. 2018-15 and Ordinance No. 2018-16 are void and of no effect, for interest and costs of suit, attorney's fees, and for other such relief as the Court deems just and equitable.

SECOND COUNT

Ordinance No. 2018-14, Ordinance No. 2018-15 ARE IN VIOLATION OF N.J.S.A. 39:4-8

14. Plaintiff repeats and realleges the statements in numbers 1-13.

15. N.J.S.A 39:4-8 states that any ordinance, resolution, or regulation which places any impact on a State roadway shall require the approval of the commissioner.

16. The Borough has closed streets which clearly have an impact on State Highways.

17. Closing these roads during commuting hours has resulted in an increase in traffic on all three State Highways and would therefore also increase the safety of commuters on these highways.

18. The Borough has not sought approval from the Commissioner and is in direct violation of N.J.S.A 39:4-8.

19. N.J.S.A 39:4-8 also states that municipality that is enacting the ordinance, must provide appropriate notice to the adjoining municipality or county before enacting such ordinance. No such prior notice was given.

20. The Borough's new ordinance places an increased burden on surrounding municipalities, some including Fort Lee, Teaneck and Edgewater, which will see an increase in commuting traffic from the state highways.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14 and Ordinance No. 2018-15 are void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

THIRD COUNT

Ordinance No. 2018-14 and Ordinance No. 2018-15 ARE IN VIOLATION OF N.J.S.A 39:4-197.

21. Plaintiff repeats and realleges the statements in numbers 1-20.

22. N.J.S.A. 39:4-197 requires that a municipality may not pass an ordinance that alters or nullifies any provisions of N.J.S.A. 39:4-197 without the approval of the Commissioner.

23. The Borough's ordinance is in clear violation of the intended nature of N.J.S.A 39:4-8 and N.J.S.A. 39:4-197, and does not fall into any of the exceptions.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14 and Ordinance No. 2018-15 are void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

FOURTH COUNT

Ordinance No. 2018-14 and Ordinance No. 2018-15 ARE IN VIOLATION N.J.S.A 39:4-197.2

24. Plaintiff repeats and realleges the statements in numbers 1-23.

25. N.J.S.A 39:4-197.2, states that a municipality may not regulate traffic on a county road unless it complies with N.J.S.A. 39:4-197, and has consent or the governing body of the county.

26. For reasons listed under Count Three, the Borough is not in compliance with N.J.S.A 39:4-197.

27. The Borough has limited traffic on parts of Fort Lee Road, Broad Avenue, Grand Avenue, and Bergen Boulevard, all of which are county roads except Broad Avenue. Broad Ave, Grand Ave and Bergen Boulevard run through both Bergen and Hudson counties.

28. By blocking off the roads to the public, the Borough has limited the public's ability to drive on roads that run through multiple municipalities and counties.

29. The Borough failed to get consent from the governing body of Bergen county and is therefore in violation of N.J.A. 39:4-197.2.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14 and Ordinance No. 2018-15 are void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

FIFTH COUNT

Ordinance No. 2018-16 IS IN VIOLATION of N.J.S.A 39:4-94.2

30. Plaintiff repeats and realleges the statements in numbers 1-29.

31. The Borough has enacted a two hundred dollar ($200.00) fine for any vehicle who violates Ordinance No. 2018-16.

32. N.J.S.A 39:4-94.2 specifically states that anyone who drives a vehicle over or upon the closed section of the highway, road or street which he knows or should have reason to know has been closed to traffic shall be subject to a fine of no more than $100.00.

33. The Borough has unilaterally decided on a fee they can charge to motorists which is in direct violation of state law.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-16 is void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

SIXTH COUNT

Ordinance No. 2018-14 and Ordinance No. 2018-15 ARE A VIOLATION OF PLAINTIFF'S CIVIL RIGHTS UNDER 42 U.S. CODE §1983.

34. Plaintiff repeats and realleges the statements in numbers 1-33.

35. U.S. Code §1983 guarantees Plaintiff her civil rights under the law.

36. Defendants' are violating Plaintiff's Fifth Amendment rights of basic liberty.

37. Plaintiff has a constitutional right to travel freely without being stopped and questioned

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14 and Ordinance No. 2018-15 are void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

SEVENTH COUNT

Ordinance No. 2018-14 and Ordinance No. 2018-15 ARE A VIOLATION OF THE INTERSTATE COMMERCE CLAUSE

38. Plaintiff repeats and realleges the statements in numbers 1-33.

39. The Interstate Commerce Clause, found in Article 1, Section 8 of the US Constitution states that a state may not pass legislation that discriminates against or excessively burdens interstate commerce.

40. State regulations affecting interstate commerce, whose purpose or effect is to gain for those within the state an advantage at the expense of those without, or to burden those out of the state without any corresponding advantage to those within, impinge on the Plaintiff's Constitutional rights.

41. The Borough cannot enact an ordinance that favors only the residents of its town, and discriminates against non-residents and commuters within and out of New Jersey.

WHEREFORE, Plaintiff demands judgment against Defendants, for a declaration that Ordinance No. 2018-14 and Ordinance No. 2018-15 are void and of no effect, for interest and costs of suit, and for other such relief as the Court deems just and equitable.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, plaintiff designates Jacqueline Rosa as trial counsel.

CERTIFICATION PURSUANT TO RULE 4:5-1

Pursuant to Rule 4:5-1, the undersigned certifies that the matter in controversy is not the subject of any other action pending in any Court or of a pending arbitration proceeding, nor is any other action or arbitration proceeding contemplated.

SEIGEL LAW FIRM LLC

Jacqueline Rosa, Esq.
Pro Se Plaintiff

Dated: October 12, 2018

SEIGEL LAW LLC
Attorney ID: 09372010
505 Goffle Road
Ridgewood, New Jersey 07450
Attorney for Plaintiffs
(201) 444-4000

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, et al,

Defendant,

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION

Plaintiff,

v.

BOROUGH OF LEONIA, et al.

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: HUDSON COUNTY

DOCKET NO. HUD-L-607-18

Civil Action

ORDER

THIS MATTER having been opened to the Court upon the application of counsel for Plaintiff, and on notice to all counsel of record, and the Court having considered the moving papers, and any opposition thereto, and good cause having been shown,

IT IS on this 12 day of October, 2018,

ORDERED that Plaintiff shall be and is hereby granted leave to file and serve an Amended Complaint to include the new Ordinances,

ORDERED that plaintiffs shall file and serve the Amended Complaint within 7 days of its receipt of this Order; and it is further

ORDERED that Defendants, shall file an Answer or otherwise responsive pleading, within 20 days of service of the Amended Complaint and this Order; and it is hereby further

ORDERED that Sanctions, attorney's fees, and costs of litigation are denied without prejudice for the reasons placed on the record on October 12, 2018.

Uploaded on eCourts.

Hon. Peter F. Bariso, Jr., A.J.S.C.

Opposed

EXHIBIT PP

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY
R.J. Hughes Justice Complex
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Department of Transportation
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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - HUDSON COUNTY
DOCKET NO.: HUD-L-607-18

JACQUELINE ROSA,

Plaintiff,

v.

BOROUGH OF LEONIA, ET AL.,

Defendants.

STATE OF NEW JERSEY DEPARTMENT OF TRANSPORTATION,

Plaintiff-Intervenor,

v.

BOROUGH OF LEONIA, NEW JERSEY,

Defendant.

Civil Action

AMENDED COMPLAINT FOR A DECLARATORY JUDGMENT AND FOR AN ACTION IN LIEU OF PREROGATIVE WRITS

The State of New Jersey Department of Transportation ("DOT") brings this action against the Borough of Leonia ("Leonia"), New Jersey, for an order declaring that Leonia's recently adopted traffic ordinances, Ordinance Nos. 2017-19, 2018-2 and 2018-5 (hereinafter collectively referred to as "the ordinances"), and Ordinance Nos. 2018-14 and 2018-15 (hereinafter collectively referred to as "the new ordinances"), are legally invalid as a matter of law and permanently enjoining Leonia from enforcing the ordinances.

THE PARTIES

1. The DOT maintains its headquarters at the David J. Goldberg Transportation Complex, 1035 Parkway Avenue, Trenton, in the County of Mercer, New Jersey. Pursuant to N.J.S.A. 27:1A-1, the DOT is responsible for promoting the "efficient, fully integrated and balanced transportation system" throughout New Jersey, including the review and approval of local traffic ordinances on municipal or county roads.

2. Leonia is incorporated under the borough form of government. N.J.S.A. 40A:60-1 to -8.1. The governing body of Leonia consists of the mayor and six council members, all of whom are elected at-large. N.J.S.A. 40A:60-2. According to

Leonia's website, the borough is comprised of multiple departments, including a police department.

3. Leonia is located within close proximity to the George Washington Bridge and to several state and county highways, including but not limited to, the New Jersey Turnpike, and State Routes 4, 46 and 80. In addition, a portion of State Route 93, also known as Grand Avenue, is within the municipal boundaries of Leonia.

4. Leonia is adjacent to several other municipalities within Bergen County, including Fort Lee, Englewood, Ridgefield Park, Palisades Park, and Teaneck. A portion of Bergen County Route 503, also known as Degraw Avenue and Fort Lee Road, is within Leonia.

THE DOT's LEGAL AUTHORITY TO REGULATE TRAFFIC

5. The Legislature's purpose and intent in passing the "Transportation Act of 1966" ("Transportation Act") was:

> to establish the means whereby the full resources of the State could be used and applied in a coordinated and integrated matter to solve or assist in the solution of the problems of all modes of transportation; to promote an efficient, fully integrated and balanced transportation system for the State; to prepare and implement comprehensive plans and programs for all modes of transportation development in the State; and to coordinate the transportation activities of State agencies, State-created public authorities, and

> other public agencies with transportation responsibilities within the State.
>
> [N.J.S.A. 27:1A-1.]

6. The Transportation Act authorizes the Commissioner of Transportation (the "DOT Commissioner") to develop and promote efficient transportation services and coordinate the activities of the DOT with other public agencies and authorities. N.J.S.A. 27:1A-5.

7. Pursuant to N.J.S.A. 39:4-8(a), the Commissioner is not required to approve any ordinance, resolution, or regulation, unless, after investigation by the Commissioner the same shall appear to be "in the interest of safety and the expedition of traffic on the public highways."

8. The Legislature in N.J.S.A. 39:4-8(b) and (c) permits municipalities to adopt traffic ordinances without the DOT Commissioner's approval only for the traffic measures listed in N.J.S.A. 39:4-8(c), subject to the provisions of N.J.S.A. 39:4-138, and N.J.S.A. 39:4-197.

9. For example, the Legislature in N.J.S.A. 39:4-197 permits municipalities to alter speed limitations; limit the use of streets to certain classes of vehicles; designate one way streets; and regulate street parking.

10. Pursuant to N.J.S.A. 39:4-8(a), prior to the adoption of any municipal or county ordinance, resolution, or regulation, which places any impact on roadways in an adjoining municipality or county, the governing board or body of the municipality must provide appropriate notice to the adjoining municipality or county.

11. Pursuant to N.J.S.A. 39:4-8(a), notwithstanding any other provision of N.J.S.A. 39:4-8 to the contrary, any municipal or county ordinance, resolution, or regulation which places any impact on a State highway shall require the approval of the DOT Commissioner. Impact on a State highway is defined by N.J.A.C. 16:27-2.1 to mean "any traffic control device on a non-State highway that is proposed for installation: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway" and "any traffic regulation applicable to a non-State highway: 1. At a State highway intersection; 2. Within 500 feet of a State highway; or 3. At a distance greater than 500 feet from a State highway but has a resultant queue that extends within 500 feet or less from a State highway."

12. The Legislature has not established authority under Title 39, or elsewhere, for a municipality to limit access to certain streets depending on whether a person is classified as a resident or is a person seeking to conduct business within a municipality.

13. The Legislature has not established authority in Title 39, or elsewhere, for a municipality to establish "no through" streets.

14. The Attorney General opined in 1955 that the power to designate so-called "no through" streets is not among the powers granted to a municipality by N.J.S.A. 39:4-197, nor is such power granted by any other provision of our statutes. As the Attorney General opined, "There is no inherent power vested in a municipality by which it may legally restrict the right of the public to the free use of streets and roads. Any right of the municipality to pass ordinances and resolutions regarding the flow of traffic over its streets and highways can arise only by legislative grant; and there has been none." (DOT Exhibit A)

15. This Attorney General opinion remains legally valid because, while the Legislature has amended Title 39 several times, most recently in 2008 to extend certain

additional traffic regulation powers to municipalities and counties, the Legislature has never extended to municipalities the authority to adopt "no through" street ordinances, or to limit access to municipal streets based on a residency classification or on whether a person was seeking to access a destination within the municipality.

LEONIA'S INVALID TRAFFIC ORDINANCES

16. The Mayor and Council of Leonia adopted the ordinances between December 4, 2017 and March 5, 2018, and adopted the new ordinances on September 17, 2018.

17. The ordinances restrict traffic on certain municipal streets during certain hours, to its residents, with certain exceptions, including persons who can demonstrate a documented need to access a residence on a Leonia street and persons traveling to destinations within Leonia.

18. On or about December 4, 2017, the Mayor and Council of Leonia adopted Ordinance Number 2017-19, which amended and supplemented Chapter 194 of Leonia's Municipal Code and added two new provisions, Sections 194-25.1 and 194-49.

19. Section 194-25.1 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides: "Closing of Certain Streets. No person shall operate a vehicle on those streets or

parts of streets as described in Schedule XVIII (§ 194-49) attached to and made a part of this Chapter during the times of the days indicated in said Schedule unless that person is a resident of the said street needing access to his home or can demonstrate or document a need to access a residence on the street or parts of streets as described."

20. Section 194-49 of Leonia's Municipal Code, identified as Ordinance 2017-19, provides a list of travel restrictions and road closures affecting approximately 70 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

21. On or about January 17, 2018, the Mayor and Council of Leonia adopted Ordinance Number 2018-2, which amended and supplemented Chapter 194 of Leonia's Municipal Code, and added a new provision, Section 194-25.2.

22. Section 194-25.2 of Leonia's Municipal Code, identified as Ordinance Number 2018-2, provides for a $200 penalty for any person convicted of violating Section 194-25.1 "or imprisonment for a term of not exceeding 15 days, or both."

23. On or about March 5, 2018, Leonia adopted Ordinance Number 2018-5, which amends Sections 194-25.1 and 194-149 of Leonia's Municipal Code.

24. Section 194-25.1 of Leonia's Municipal Code, as amended in its entirety by Ordinance 2018-5, provides: "Closing of Certain Streets. No person shall operate a vehicle on those streets or parts of streets as described in Schedule XVIII (§ 194-49) attached to and made part of Chapter 194 during the times of the days indicated in said Schedule unless that person (a) Is a resident of said street needing access to his home or can demonstrate a documented need to access a residence on the street or parts of streets as described; or (b) [i]s traveling to and/or from a Leonia destination."

25. Section 194-49 of Leonia's Municipal Code, as amended by Ordinance 2018-5, provides an amended list of travel restrictions and road closures affecting more than 75 roads and intersections during the hours of 6:00 a.m. to 10:00 a.m. and 4:00 p.m. to 9:00 p.m.

26. On or about September 18, 2018, the Mayor and Council of Leonia adopted Ordinance Numbers 2018-14 and 2018-15), which amended and supplemented Chapter 194 of Leonia's Municipal Code and amended Sections 194-25.1 and 194-49.

27. The ordinances, and the new ordinances, which "close" or restrict non-residents or those not having business in Leonia from turning onto a long list of streets, have in

effect made these streets "no through streets" during the hours specified in the ordinances and the new ordinances for individuals who do not have a residence on the street or need to access a residence on the street or parts of the streets described in the ordinances and the new ordinances, or are traveling to and/or from a Leonia destination.

28. The ordinances and the new ordinances have an impact on a State highway as defined by N.J.A.C. 16:27-2.1, and were not submitted to the DOT Commissioner for approval.

29. The ordinances and the new ordinances have an impact on adjoining municipalities and Leonia did not provide notice to the adjoining municipalities as required by N.J.S.A. 39:4-8(a) (second unnumbered paragraph).

30. According to published news reports, the purpose of the ordinances was to induce navigational apps to remove Leonia streets from their algorithms. Lisa W. Foderaro, Navigation Apps Are Turning Quiet Neighborhoods Into Traffic Nightmares, N.Y. TIMES (Dec. 24, 2017), http://www.nytimes.com/2017/12/24/nyregion/traffic-apps-gps-neighborhoods.html.

31. According to published news reports and Leonia's website, Leonia has been offering residents yellow hang tags in

order to identify their vehicles for purposes of accessing the Leonia roads with restricted access pursuant to the ordinances. John Surico, What Happens When a City Bans Non-Resident Drivers,? CITYLAB (Apr. 18, 2018), http://www.citylab.com/transportation/2018/04/the-small-town-that-took-on-waze/558215; see also Leonia Safe Streets, Borough of Leonia, http://www.leonianj.gov/depts/leonia_safe_streets_information.htm (last visited May 15, 2018).

32. According to published news reports, the Mayor of Leonia has indicated that drivers without yellow tags may be stopped and questioned by Leonia's police department. Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers $200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM), http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200.

33. According to one published news report, Leonia's mayor stated, "The first thing the officer is going to say is, 'Do you have business in Leonia?'" Dave Carlin, Leonia, New Jersey: Town wants residential streets removed from GPS apps, may fine drivers $200, WCBS-TV/CNN (Jan. 10, 2018, 5:41 AM),

http://www.wptv.com/news/local-news/water-cooler/leonia-new-jersey-town-wants-residential-streets-removed-from-gps-apps-may-fine-drivers-200.

34. According to published news reports, for purposes of enforcing the ordinances, Leonia posted "Do Not Enter" signs with the words "Residents Exempt" printed below. Svetlana Shkolnikova, 'Residents and Leonia Destinations Only' to replace 'Do Not Enter' signs barring commuters, NORTHJERSEY.COM (Feb. 22, 2018 10:23 PM), http://www.northjersey.com/story/news/bergen/leonia/2018/02/21/leonia-drafts-new-traffic-signage-help-businesses/359675002.

35. According to published news reports, Leonia later proposed posting amended signs in order to appeal to Leonia's businesses. Leonia To Get Friendlier Signs Banning GWB Shortcut Seekers, CBS NEW YORK/AP (Feb. 15, 2018), http://newyork.cbslocal.com/2018/02/15/leonia-new-road-signs; Svetlana Shkolnikova, Leonia amends controversial road closure ordinance to boost business, NORTHJERSEY.COM (March 5, 2018 11:31 PM), http://www.northjersey.com/story/news/bergen/leonia/2018/03/05/leonia-amends-controversial-road-closures-law-boost-business/390951002.

36. On March 16, 2018, the Attorney General's Office wrote to Leonia's Counsel explaining the applicable Title 39 statutes, the 1955 Attorney General opinion, and that they render the Leonia ordinances invalid. The Attorney General's Office directed Leonia to "immediately refrain from enforcing the above referenced ordinances" and offered to facilitate a meeting between Leonia and the DOT officials to discuss other, appropriate measures to address Leonia's traffic concerns.

37. DOT traffic engineering staff and Leonia met on April 4, 2018 to discuss appropriate traffic controls in Leonia that would not violate Title 39.

38. On information and belief, Leonia continues to enforce the ordinances and/or the new ordinances, through traffic control devices (signage) and municipal police enforcement efforts.

FIRST COUNT
(Declaratory Judgment)

39. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

40. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other

legal relations so as to afford litigants relief from uncertainty and insecurity.

41. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they purport to create "no-through streets," even though pursuant to Title 39, and as further interpreted by the Attorney General's 1955 opinion, Leonia has no such authority, along with awarding to the DOT reasonable attorney's fees and costs.

SECOND COUNT
(Declaratory Judgment)

42. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

43. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

44. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they purport to regulate traffic based on residency classification for which Leonia has no authority, along with awarding to the DOT reasonable attorney's fees and costs.

THIRD COUNT
(Declaratory Judgment)

45. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

46. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

47. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create an impact on a State highway (State Route 93) and Leonia did not submit the ordinances to the DOT Commissioner for approval, along with awarding to the DOT reasonable attorney's fees and costs.

FOURTH COUNT
(Declaratory Judgment)

48. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

49. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

50. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the ordinances are null and void, because they create impact on roadways in one or more adjoining municipalities and Leonia did not provide notice of the ordinance to the adjoining municipalities, along with awarding to the DOT reasonable attorney's fees and costs.

FIFTH COUNT
(Action in Lieu of Prerogative Writs)

51. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

52. Leonia does not have legal authority within one of the enumerated exceptions under Title 39 to restrict traffic as it has done in the ordinances.

53. Because the ordinances at issue are legally invalid, Leonia should be enjoined from further enforcing the ordinances at issue, including but not limited to the use of signage, traffic stops by police officials notifying motorists about the ordinances at issue, and the issuance of traffic citations.

54. The DOT's claim for relief is based upon an established legal right.

55. This matter involves overriding public interest considerations that call out for judicial intervention by this court through the issuance of an injunction that permanently enjoins Leonia from further enforcing the ordinances, including but not limited to the use of signage regarding the ordinances, municipal police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinances.

WHEREFORE, the DOT demands judgment against Leonia enjoining and restraining Leonia from further enforcement of the ordinances, including but not limited to the use of signage

regarding the ordinances, police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the ordinances, along with awarding to the DOT reasonable attorney's fees and costs.

SIXTH COUNT
(Declaratory Judgment)

56. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

57. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

58. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they purport to create "no-through streets," even though pursuant to Title 39, and as further interpreted by the Attorney General's 1955 opinion, Leonia has no such authority, along with awarding to the DOT reasonable attorney's fees and costs.

SEVENTH COUNT
(Declaratory Judgment)

59. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

60. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

61. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they purport to regulate traffic based on residency classification for which Leonia has no authority, along with awarding to the DOT reasonable attorney's fees and costs.

EIGHTH COUNT
(Declaratory Judgment)

62. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

63. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

64. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that Ordinance No. 2018-14 is null and void, because said ordinance creates an impact on a State highway (State Route 93) and Leonia did not submit said ordinance to the DOT Commissioner for approval, along with awarding to the DOT reasonable attorney's fees and costs.

NINTH COUNT
(Declaratory Judgment)

65. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

66. The Declaratory Judgment Act, N.J.S.A. 2A:16-50 to -62, authorizes courts to declare rights, status and other legal relations so as to afford litigants relief from uncertainty and insecurity.

67. Given the circumstances here, there is a justiciable controversy between adverse parties and the DOT has an interest in this suit.

WHEREFORE, the DOT demands judgment against Leonia declaring that the new ordinances are null and void, because they create impact on roadways in one or more adjoining municipalities and Leonia did not provide notice of the ordinance to the adjoining municipalities, along with awarding to the DOT reasonable attorney's fees and costs.

TENTH COUNT
(Action in Lieu of Prerogative Writs)

68. The DOT repeats and reasserts all prior allegations of this complaint as if fully set forth at length herein.

69. Leonia does not have legal authority within one of the enumerated exceptions under Title 39 to restrict traffic as it has done in the new ordinances.

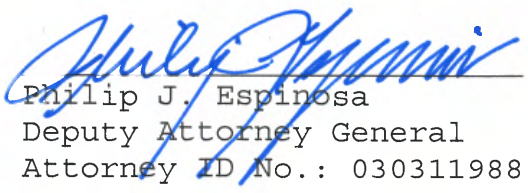
70. Because the new ordinances at issue are legally invalid, Leonia should be enjoined from further enforcing the new ordinances, including but not limited to the use of signage, traffic stops by police officials notifying motorists about the ordinances at issue, and the issuance of traffic citations.

71. The DOT's claim for relief is based upon an established legal right.

72. This matter involves overriding public interest considerations that call out for judicial intervention by this court through the issuance of an injunction that permanently enjoins Leonia from further enforcing the new ordinances, including but not limited to the use of signage regarding the ordinances, municipal police officials notifying motorists about the ordinances, and the issuance of traffic citations based on the new ordinances.

WHEREFORE, the DOT demands judgment against Leonia enjoining and restraining Leonia from further enforcement of the new ordinances, including but not limited to the use of signage regarding the new ordinances, police officials notifying motorists about the new ordinances, and the issuance of traffic citations based on the new ordinances, along with awarding to the DOT reasonable attorney's fees and costs.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

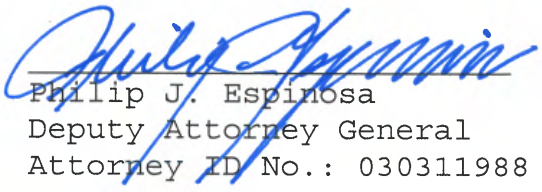
By: 
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: October 12, 2018

CERTIFICATION PURSUANT TO RULE 4:69-4

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:69-4, that upon information and belief, because the ordinances and the new ordinances are already publicly available on the internet, there are no necessary transcripts of Leonia proceedings that must be ordered in these circumstances.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: 
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: October 12, 2018

CERTIFICATION PURSUANT TO RULE 4:5-1

I, Philip J. Espinosa, Deputy Attorney General, certify pursuant to Rule 4:5-1 that the matter in controversy is not the subject of any other action pending in any court or of a pending arbitration proceeding and no other action or arbitration proceeding is contemplated. In addition, there is no other non-party who should be joined in this action or who is subject to joinder at this time because of potential liability as to any party on the basis of the same transactional facts.

GURBIR S. GREWAL
ATTORNEY GENERAL OF NEW JERSEY

By: _____
Philip J. Espinosa
Deputy Attorney General
Attorney ID No.: 030311988

Dated: October 12, 2018