

PETER DICKSON
ATTORNEY AT LAW
LAW OFFICES OF PETER DICKSON
23 ROUTE 31 NORTH, SUITE A28
PENNINGTON NEW JERSEY 08534

MEMBER N.J. AND D.C. BARS

Telephone: (609) 690-0312
Cell phone: (609) 651-9960

March 28, 2025

The Honorable Veronica Allende
Judge of the Superior Court
Somerset County Courthouse
20 North Bridge Street, Floor 1
Somerville NJ 08876-1262

Re: Morrisette v. Town of Phillipsburg Town Council, WRN-L-000378-24
Letter Brief Opposing Peron Construction, LLC's, Motion to Dismiss

Dear Judge Allende:

This firm represents the plaintiffs in this matter. Please accept this letter brief in lieu of a more formal brief in opposition to the patently frivolous motion to dismiss filed by intervenor Peron Construction, LLC (Peron). The motion is also procedurally deficient.

We note at the outset that motions to dismiss are unheard of in R. 4:69 actions in lieu of prerogative writs. There is no reason why the Peron arguments could not have been made in its trial brief to this court. But Peron is already adding to the Court's burdens and the plaintiffs' legal fees and costs, the latter no doubt being among Peron's purposes in bringing this motion, which has no chance of success. That contravenes the tests for intervention as of right and permissive

intervention, which we will address in our motion to reconsider the grant of intervention.

Peron denominates its motion as brought pursuant to R. 4:6-2(e), failure to state a claim. It is hornbook law that a motion to dismiss on that basis is based solely on an indulgent reading of the complaint, accepting all well pleaded allegations as true and drawing inferences in favor of the plaintiff. See, e.g., Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989)). It is also settled that if a motion brought under R. 4:6-2(e) contains materials outside the pleadings, it is to be treated as a motion for summary judgment under R. 4:46. See R. 4:6-2(e).

Peron's motion claims to accept the allegations as true, but, in fact, it is disputing them by way of certifications outside the pleadings by Michael Perrucci and Douglas Steinhardt, Esqs., name partners in the firm of Florio, Perrucci, Steinhardt Capelli & Tipton. It must thus be treated as a motion for summary judgment. Mr. Steinhardt's certification in particular denies the allegations and almost every inference that can reasonably be drawn from them. That means that the 28-day timetable for such motions must apply, and only after the mandated statement of material facts is filed. See R. 4:46-2(a); see Pressler & Verniero, Current N.J. Court Rules, sec. 4:46-2[1.2] at 1520 (statement of material facts is mandatory).

However, the better course is for the court to exercise its case management function and simply deny the motion as procedurally deficient, and direct that Peron present these arguments in its trial brief. It would be a significant waste of the court's time to hear and decide a motion for summary judgment on just one count and then receive trial briefing for the plenary trial on the record below on the rest of the complaint, likely including the fourth count. Although nominally permitted by R. 4:69-2, summary judgment motions are normally inappropriate in prerogative writ actions. See Pressler & Verniero, Current N.J. Court Rules, sec. 4:69-7[3].

A form of proposed order is included.

Respectfully,

/s/ Peter Dickson

Peter Dickson
Attorney for Plaintiffs, David P.
Morrisette and Sandra S. Morrisette
N.J. Attorney # 001661979

Peter Dickson
 NJ Attorney ID # 001661979
 Law Offices of Peter Dickson
 23 Route 31 North, Suite A28
 Pennington, NJ 08534
 Telephone: (609) 690-0312
 Cell phone: (609) 651-9960
 Email: rwppddl@cs.com
 dicksonpd@cs.com
 Attorney for Plaintiffs,
 David P. Morrisette
 and Sandra S. Morrisette

David P. Morrisette and	:	SUPERIOR COURT OF NEW JERSEY
Sandra S. Morrisette,	:	LAW DIVISION - WARREN COUNTY
Plaintiffs,	:	
v.	:	DOCKET NO. WRN-L-000378-24
Town of Phillipsburg Town Council,	:	
Defendant,	:	Civil Action
and	:	
Peron Construction, LLC,	:	ORDER
Defendant-Intervenor	:	

This matter having come before the court on the motion by Defendant-Intervenor Peron Construction, LLC, to dismiss Count Four of the Complaint and by the opposition by Plaintiffs' counsel, Peter Dickson, and it appearing that good cause has been shown,

It is on this _____ day of _____, 2025,

ORDERED that the motion to dismiss Count Four of Defendant-Intervenor Peron Construction, LLC, is denied as procedurally deficient, and it is further

ORDERED that Defendant-Intervenor Peron Construction, LLC, present the

claims and arguments in its motion to dismiss in its brief for the court's trial, and it is further

ORDERED that a copy of this Order shall be deemed served on all attorneys of record via e-filing on the date set forth herein. Pursuant to R. 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically, not served personally to court this date, within seven (7) days of the date of this Order.

Honorable Veronica Allende, J.S.C.

Motion to dismiss was

☐ Unopposed

☒ Opposed.