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April 7, 2025

**Via ECourts Filing**

Hon. Veronica Allende, J.S.C.  
Warren County Courthouse  
413 Second Street  
Belvidere, New Jersey 07823

**Re: David P. Morrisette, et al v. Town of Phillipsburg**  
**Docket No. WRN-L-378-24**  
**Peron Construction, Inc. - Reply - Motion Dismiss**

Dear Judge Allende:

This is Peron Construction, Inc's ("Peron") reply brief concerning Plaintiffs' opposition to Peron's motion to dismiss Count Four of its Complaint. Plaintiffs' opposition is curious, as it makes no substantive argument against Peron's motion and instead makes a procedural argument, which does not hold up to scrutiny.

Plaintiffs argue that motions to dismiss are rare in prerogative writ cases and allege that Peron's motion is procedurally deficient, which must result in its denial. The alleged procedural deficiencies are that the motion to dismiss is actually a motion for summary judgment per R. 4:46 and there was then a failure to provide a separate statement of facts as required by R. 4:46-2(a). Plaintiffs' argument is misplaced and is in bad faith.

Plaintiffs correctly note that R. 4:6-2(e) motions to dismiss are reviewed "based solely on an indulgent reading of the complaint, accepting all well pleaded allegations as true and drawing inferences in favor of the plaintiff". Quoting Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). Plaintiffs also wrongly state that Peron accepts the Count Four allegations as true. This is not true – as stated in its moving brief Peron accepts Complaint ¶54 as true but

rejects ¶¶55-57 as nothing but speculation. This goes to the heart of Peron's motion. Peron, and the Court, can and should accept "well pleaded allegations as true" – but when the allegations are plainly and blatantly false, as Complaint ¶¶55-57 are, they are not entitled to any deference. Plaintiffs do not raise any substantive objection or argument against Peron's motion, because there are none to be made.

Plaintiffs argue that as Peron's motion contains materials outside of the pleadings, certifications disputing Complaint ¶¶55-57, the motion should be treated as one for summary judgment per R. 4: 46. Peron has no objection to this. However, Plaintiffs then claim that because the motion lacks a separate statement of material facts per R. 4:46-2(a) the motion should be denied. There is no requirement that the motion to dismiss contain all the elements of a summary judgment motion, only that should a R. 4:6-2(e) motion to dismiss contain materials outside the pleadings then the time frame set by R. 4:46 be followed. Peron takes no issue with this. However, the time frame for the motion may be modified. R. 1:1-2(a) provides that the Rules:

shall be construed to secure a just determination, simplicity in procedure, fairness in administration and the elimination of unjustifiable expense and delay. Unless otherwise stated, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.

Here, the parties conferred with the Court on March 13, 2025, at which time Peron's intention to file a partial motion to dismiss was discussed. Plaintiffs' counsel was present and participated in this discussion, at which time it was agreed that the motion would be filed by March 21, 2025, with an April 11, 2025, return date. This memorialized in the Court's March 13, 2025, Order (see attached Exhibit A). At no time did Plaintiffs object. In addition, although Peron did not provide a separate statement of material facts it did provide a factual history amply supported by citations to accompanying certifications. Although Peron contends that a separate statement of facts is not mandated for a R. 4:6-2(e) motion to dismiss it did comply with the substance, if not the form, of

R. 4:46-2(a). It is clear that the Court has the authority to relax or dispense with the Rules with the aim to eliminate unjustifiable delay and to secure a just determination.

Plaintiffs further argue that in the interests of judicial economy the motion ought not to be considered. This argument would perhaps carry some weight had Plaintiffs not recycled the previously denied conflict of interest claim, as noted by defendant Phillipsburg in its letter brief concerning the subject motion. As the Court properly noted in the earlier case, the conflict-of-interest claim is too remote and nebulous to be considered; Plaintiffs make the exact same argument here and it should likewise be denied. Judicial economy is advanced by the prompt elimination of specious claims.

Plaintiffs make no substantive argument against Peron's motion, thus implicitly conceding the merits of the argument. Plaintiffs' procedural argument falls flat, as the Court can relax or dispense with the Rules in the interest of justice and here the filing of the motion to dismiss Count Four was discussed by the parties with the Court, with no opposition from Plaintiffs. Finally, Plaintiffs' Count Four should be barred by the doctrine of res judicata, as set forth in Phillipsburg's letter brief. Accordingly, Peron's motion must prevail and Plaintiffs' Count Four must be dismissed.

Respectfully submitted,

*/s/ Mark R. Peck*

Mark R. Peck

MRP:te

Enclosure

cc: Peron Construction

# EXHIBIT A

PREPARED BY THE COURT

DAVID P. MORRISETTE & SANDRA S.  
MORRISETTE,

Plaintiff,

v.

TOWN OF PHILLIPSBURG TOWN  
COUNCIL,

Defendant

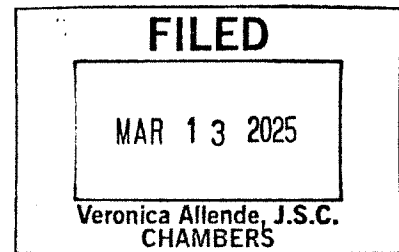
AND

PERON CONSTRUCTION,  
Defendant-Intervenor

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: WARREN COUNTY

DOCKET NO.: WRN-L-378-24

CIVIL ACTION



This matter having come before the court for a case management conference on March 13, 2025;

IT IS on this 13<sup>th</sup> day of March, 2025,

ORDERED that Plaintiff's motions for reconsideration, to supplement the record, and to procure discovery in this prerogative writ action and Defendant-Intervenor's motion to dismiss must be filed by March 21, 2025; and it is further

ORDERED that, by consent of the parties, Defendant-Intervenor's motion to dismiss filed on March 21, 2025, will be given a return date of April 11, 2025, and it is further

ORDERED that oral argument on these motions will be held virtually on April 11, 2025; 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 Rule 1:5-1(a), movant shall serve a copy of this Order on all parties not served electronically, nor served personally in court this date, within seven (7) days of the date of this Order.

A handwritten signature in black ink, appearing to be "V. Allende", written over a horizontal line.  
Honorable Veronica Allende, J.S.C.