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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



October 5, 2018

Page 2

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 Jersey 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

October 5, 2018

Page 3

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.

October 5, 2018

Page 4

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

October 5, 2018

Page 5

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

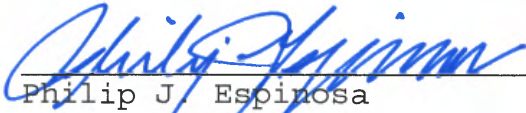
There is no meaningful difference between the old ordinances and the new ordinances. The new ordinances on their face, without legal authority under Title 39, still prohibit motorists from traveling through most of Leonia's streets during the designated times unless the motorists are Leonia residents 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,

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October 5, 2018

Page 6

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