

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, GENERAL EQUITY PART
MORRIS COUNTY
DOCKET NO. MRS-C-000130-17
APP. DIV. NO. _____

FOX HILLS at ROCKAWAY :
CONDOMINIUM ASSOCIATION, :
INC., : TRANSCRIPT
: :
Plaintiff, : OF
: :
v. : ORDER TO SHOW CAUSE
: MOTION TO DISMISS
BARBARA APPLEBAUM, PAUL :
KARDOS, AND ALAN :
ROTHSTEIN, :
: :
Defendants. :

Place: Morris County Courthouse
Washington & Court Streets
Morristown, NJ 07963

Date: February 15, 2018

BEFORE:

HONORABLE ROBERT J. BRENNAN, J.S.C.

TRANSCRIPT ORDERED BY:

MICHAEL A. SAFFER, ESQ. (Mandelbaum Salsburg, PC)

APPEARANCES:

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- and -

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(Proceedings commenced at 9:18 a.m.)

THE COURT: This is the matter of Fox Hills at Rockaway Condominium Association against Applebaum. The docket number is MRS-C-130-17.

Appearances please.

MR. BYRNE: Good morning, Your Honor. David Byrne from Ansell, Grimm & Aaron on behalf of the plaintiff.

MS. VALLE: Good morning, Your Honor. Robyn Valle on behalf of Barbara Applebaum.

MR. SAFFER: Good morning, Your Honor. May it please the Court, Michael A. Saffer, S-a-f-f-e-r, and Brian Block, B-l-o-c-k, of the firm of Mandelbaum Salsburg, representing defendant Alan Rothstein.

THE COURT: Thank you all.

I had a call from Mr. Moylen shortly ago -- a short time ago, representing defendant Paul Kardos. Mr. Moylen had a personal matter that arose apparently on an emergent basis this morning and did consent to our going ahead in his absence. He did join in the opposition to the order to show cause.

All right. We have two matters before the Court this morning. What I'll hear first is the order to show cause, of which this is the adjourned return date, and a verified complaint filed on December 14.

The order to show cause -- there was no -- no request for immediate injunctive relief, TRO. The order to show cause was filed January 3rd. And I do have opposition and reply on this.

So let's hear the order to show cause first, Mr. Byrne.

MR. BYRNE: Yes, Your Honor.

The Association filed a covenant enforcement, condominium rule enforcement case against the three owners as a result of statements they made, and some other things that we reference in the papers. I'm just setting up the procedural aspect of this.

During the course of that litigation, we'd like the parties to be separate. We'd like there to be some order put in place that keeps them separate and apart from each other during the course of -- of the litigation. In our initial papers, we talked about some significant space and -- and length, and we changed that in our supplemental papers to deal with some of the points that counsel made to be -- seek a more reasonable way to handle this in the course of the litigation.

The -- the concern that we have during the course of the litigation, and I guess in general, is, you know, the stuff that goes on in -- in the world.

1 Every time ones of these -- one of these violent things
2 takes place, you see all these high -- these headlines
3 about, you know, why didn't someone say something; or
4 who knew and who didn't say something, who didn't act,
5 who -- there seems to be a lot of opportunities in --
6 when these violent things take place that someone read
7 something, someone knew something, and then there's
8 always sort of recriminations as to why didn't people
9 do anything more to avoid it.

10 Why people are saying the kind of things
11 they're saying and talking about getting weapons and
12 shooting people, I mean, I don't -- I don't really
13 know. The point is somebody has and it's worthy of
14 being addressed. If not, and something happens, I
15 mean, I don't know we want to be the people that are
16 going to have to answer questions as to why people saw
17 these statements, an owner who was --

18 THE COURT: Did your clients go to the
19 police?

20 MR. BYRNE: Gloria A. Stahl went to the
21 police, yes.

22 THE COURT: It's a police matter, isn't it?

23 MR. BYRNE: Not in my view. There's two
24 different types of things. There's a criminal matter,
25 which, of course, fortunately, in this country is a

1 high bar to deal with. There's also civil matters. I
2 mean, people -- regular free people have the right to
3 get -- have the right to have judges issue orders and
4 deal with things that happen on a day-to-day basis,

5 THE COURT: If they have a legal basis, they
6 do.

7 MR. BYRNE: Agreed. Agreed.

8 So to the extent that the condominium has the
9 ability to bring an action to regulate the conduct of
10 its citizens, of its residents, I mean, there --

11 THE COURT: Well, they can do that by
12 agreement.

13 MR. BYRNE: Well, that's true.

14 THE COURT: And it isn't the Condominium
15 Association that's been threatened in any event.

16 MR. BYRNE: The Condominium Association has
17 been threatened because it relies upon people to
18 volunteer for the board. I don't know about the Court
19 or anybody else, but if people were threatened --

20 THE COURT: You can't shoot a condominium
21 association. You can't.

22 All right. Well, I've read all the papers,
23 so I understand your position.

24 MR. BYRNE: Yeah.

25 THE COURT: Is there anything else you'd like

1 to add?

2 MR. BYRNE: No. I just wanted to make it
3 clear that --

4 THE COURT: Yeah.

5 MR. BYRNE: Obviously, I'm -- the issue of
6 the -- the condominium, as an entity creates a -- an
7 interesting legal dynamic, but the bottom line is the
8 condominium still has to have people that are
9 interested in serving. And if they have to deal with
10 the possibility that people are going to shoot them, I
11 don't see how they're going to serve. And, therefore,
12 there is no condominium.

13 I don't know why we would want there to be
14 some allowable attitude, the Court would allow this
15 stuff to take place. If -- if there's no relief here
16 for these folks, it's basically just the ability for
17 people to set -- to threaten and make threats and do
18 all the things that are going on -- going on all over
19 the country. I don't know why we would allow this to
20 take place.

21 To me, the -- the case itself, the complaint
22 itself is sustainable. Maybe we win, maybe we lose,
23 but a condominium is clearly allowed to make a claim to
24 get injunctive relief with respect to nuisance. Maybe
25 we win, maybe we lose, but we state a claim. And once

1 there's a claim, once there's a lawsuit that's ongoing,
2 it makes complete sense to make sure the parties are
3 separate from each other, especially when some of them
4 threaten to harm others.

5 So that's my -- those are my points, Judge.
6 Thank you.

7 THE COURT: Thank you very much.

8 MR. BYRNE: Thank you, Judge.

9 THE COURT: Ms. Valle.

10 MS. VALLE: Your Honor, I'll just be brief.
11 I'll rely on my papers and -- and the argument of other
12 defense counsel. But the -- the be all and end all of
13 this matter is contained within the e-mail exchange
14 itself. My client made a flippant, irreverent and
15 rhetorical remark, shoot her question mark. And two
16 hours and fifteen minutes later apologized for that
17 remark, explaining that it was a smart aleck remark and
18 she didn't mean it.

19 Unfortunately, the matter didn't end there.
20 Miss Stahl did go to the police department, Your Honor,
21 and -- and that police report is attached to the reply
22 -- plaintiff's reply. And at the police department
23 Miss Stahl reported "an incident of harassment."

24 So it seems clear to me that even within the
25 e-mails there were several references to the fact that

1 no one was serious. There are certifications in -- in
 2 plaintiff's reply from other homeowners that indicate
 3 that they understood that Miss Applebaum was not
 4 serious. And then, of course, we have the police
 5 report itself which reflects that Miss Stahl, the board
 6 president, did not feel threatened.

7 So the bottom line, Judge, is that there --
 8 there was no threat. No reasonable person reading
 9 those e-mails could perceive a threat. And in the
 10 absence of such a threat -- of any threat, of course,
 11 injunctive relief should be denied.

12 THE COURT: Thank you.

13 Yes, sir?

14 MR. SAFFER: Thank you, Your Honor.

15 Your Honor, the -- the plaintiff has not
 16 addressed I think the most compelling argument as a
 17 matter of law in that we believe this Court has no
 18 jurisdiction to even consider this matter. Only the
 19 Prevention of Domestic Violence Act authorizes a
 20 restraining order premised on criminal conduct that
 21 requires a certain person to stay away from a certain
 22 place or refrain from personal conduct. The DBA vests
 23 exclusive jurisdiction in the Chancery Division, Family
 24 Part.

25 So we believe fervently that the plaintiff

1 has come to the wrong court. And putting all the facts
 2 aside, this Court has no jurisdiction to even hear
 3 this.

4 In addition, at Page 7 of our brief, we cited
 5 the Supreme Court's decision in The Matter of State
 6 Commissioner of Investigation, reported at 108 N.J. 35,
 7 a 1987 decision, which held that New Jersey courts
 8 generally will not allow private plaintiffs to sue for
 9 injunctions to enforce state penal laws. And the
 10 allegations of the complaint are plainly criminal in
 11 nature.

12 Your Honor queried my colleague, this is a
 13 police matter, isn't it. And it is a police matter.
 14 It's not a civil case. So for that reason alone we
 15 feel Your Honor should decline to issue any restraints.

16 But if I very briefly go -- well, does Your
 17 Honor want me to go through the Crowe against
 18 DeGioia --

19 THE COURT: I'm well aware of Crowe.

20 MR. SAFFER: -- factors.

21 THE COURT: And I've read everybody's papers.

22 MR. SAFFER: Okay.

23 THE COURT: So I'll -- I'll leave it to you.

24 MR. SAFFER: Well, the only thing I'd say
 25 that I'd like to emphasize is, putting aside is the

1 fact that we don't believe there was any actual harm
2 threatened, that is my colleague Miss Valle said this
3 was all a cyberspace e-mail exchange that was ill-
4 advised certainly and for which my client has
5 apologized. But, generally, I think in our society e-
6 mails give people the freedom to sometimes type things
7 they wouldn't -- they wouldn't say in public, so to
8 speak.

9 But putting aside no actual harm, I think
10 it's important that there's no immediate irreparable
11 harm. And the fact that the plaintiff came to this
12 Court on January 3rd, 2018 with an order to show cause
13 but did not seek any temporary restraints I think
14 speaks volumes about how immanent the threat of
15 physical violence was to any of the board members.

16 I've also indicated, just in our brief and I
17 just want to mention very briefly that no reading of
18 the master deed or the bylaws, in our opinion, give
19 rise to a claim that what these defendants are alleged
20 to have done constitute some nuisance, as a matter of
21 law.

22 So for all of those reasons, we urge the
23 Court to deny the requests for restraints.

24 THE COURT: All right. Thank you.

25 MR. BYRNE: Real quick, Judge.

1 THE COURT: Brief word.

2 MR. BYRNE: Oh. I'm sorry. Do you --
3 especially since it might be related to the -- the --
4 the next matter you're going to -- next motion you're
5 going to hear.

6 The Court certainly has jurisdictional --
7 jurisdiction over this. A condominium has the right to
8 get people to not do things and to get people to do
9 things. If I came here with a complaint against an
10 owner who was barbequing steaks in an open flame in the
11 middle of his living room and had propane tanks next to
12 that -- next to that grill, we would seek injunctive
13 relief to get the owner to comply with the rules to not
14 have open flames in the middle of his living room.

15 I mean, the concept of a condominium getting
16 injunctive relief, I -- I think is pretty settled. So
17 I get the -- the attempt to frame it in terms of a
18 domestic violence restraining order. I mean, I would
19 do the same thing. But if you look at it from a
20 condominium's perspective, there are things that go on
21 every day in a condominium -- or that don't go on every
22 day in a condominium and the condominium has the
23 obligation, arguably, fiduciary duty-wise to deal with
24 out of the of -- of threat to others. That's just the
25 jurisdictional issue.

1 The -- from the immediate -- the immediate
2 threat issue, it's a fair point, but collectively I
3 think the board felt that once there was a police
4 report made and once there was a complaint filed, that
5 it made the -- the judgment that that probably would be
6 enough to -- to avoid violence until maybe the case
7 proceeded on a little more, and that trying to get some
8 quick immediate effort at that point was probably
9 unnecessary. And the balance of equities would have
10 been different, more -- more challenging to them. So I
11 think they felt that once there was a police report in
12 place, once there was a litigation in place, that the
13 parties themselves might be able to stabilize things
14 and avoid violence until we got to this point.

15 So, but like you said, Your Honor's read
16 everything and that's all I have to say.

17 THE COURT: Thank you very much.

18 MR. BYRNE: Thank you, Judge.

19 THE COURT: All right. On the application
20 for pendente lite injunctive relief, the matter stems
21 from a dispute over an alleged threat of violence made
22 by individual defendants against the president of the
23 board of directors of the plaintiff, which is the Fox
24 Hills at Rockaway Condominium Association, Inc., which
25 is a New Jersey condo association established by a

1 master deed recorded December 24, 1998.

2 Pursuant to the Condominium Act, defendants
3 Barbara Applebaum -- excuse me -- Paul Kardos, and Alan
4 Rothstein, own units within the condominium
5 development.

6 On December 6th of 2017 the defendant Kardos
7 sent a group e-mail to about 22 unit owners, including
8 Applebaum and Rothstein, with the result of the recent
9 board of directors election within the association.
10 And there Kardos asked the recipients if they find it
11 odd that the least favorite director is the director,
12 and that would be Gloria Stahl. And sought ideas, Mr.
13 Kardos did, on how to correct the situation. Later on
14 that morning in response to that e-mail, Applebaum
15 replied "shoot her?"

16 Rothstein followed up that he agreed and
17 asked who would go to Virginia to procure a gun. He
18 then clarified his comments and suggested the unit
19 owners write to the board, or better even then file a
20 petition with the board.

21 Shortly thereafter, another unit owner, and
22 that would be David Solomon, e-mailed the group and
23 stated, "I don't think we should be talking about
24 killing anyone or buying guns, even though you were not
25 serious." That's a quote.

1 Applebaum replied, "Sorry if I offended
2 anyone, it was just a smart blank remark on my part.
3 Of course, I don't mean it." Applebaum indicated her
4 opinion that the board can elect whomever it wants and
5 that it does not effect the unit owners.

6 The next day, Rothstein disagreed with
7 Applebaum's opinion that the board can elect whomever
8 it wants and reaffirmed his suggestion for filing a
9 petition and further asked for Kardos's opinion. And
10 Rothstein in -- beyond that, wrote to Applebaum,
11 "Barbara, your remark may have been a smart blank one,
12 but if I could get away with it, I would buy a gun and
13 pull the trigger."

14 Kardos replied, "I agree with Dave," that
15 would be Mr. Solomon, "we should not be talking about
16 killing anyone or buying guns, even though you are not
17 serious."

18 Kardos made a suggestion about changing the
19 bylaw of the association so that the president is to be
20 elected directly by all homeowners instead of the
21 board.

22 Following that response, Applebaum and Kardos
23 exchange four more group e-mails between December 7 and
24 8 concerning power and responsibilities of the
25 president of the board.

1 And then on the 14th of December this action
2 followed by way of the verified complaint I mentioned
3 at the outset, the entry of the order to show cause,
4 which did not seek an immediate temporary restraining
5 order, emergent immediate order.

6 And in the verified complaint -- now the
7 plaintiff, keep in mind, is the condo association --
8 raises -- it sets forth this fact pattern and asked the
9 Court to declare that defendants violated the master
10 deed and bylaws of the association; and to prohibited
11 the defendants from taking additional actions in
12 furtherance of their conspiracy to murder the president
13 of the board, Ms. Stahl; and to issue an order
14 restraining the defendants from coming within a hundred
15 feet of the board members, including Miss Stahl, Peter
16 Foreman, Eleanor Hunt, Connie Kelly, J. Amdur, Barry
17 Werfel, and Bonnie Cohen. Although there has been some
18 amendment to that -- the particulars in that request.
19 And to award attorney's fees under the bylaws.

20 Now there's an issue concerning jurisdiction
21 here. The defendants argue the Chancery Court has no
22 jurisdiction to adjudicate this matter and issue a
23 restraining order or the sort sought by the plaintiff,
24 even as amended. Defendants argue that the only -- as
25 that request has been somewhat amended.

1 Defendants argue that the only legal
2 authority for entry of a restraining order of this type
3 is -- is based on the Prevention of Domestic Violence
4 Act, N.J.S.A. 2C:25-17, et seq., which allows victims
5 of domestic violence to obtain restraining order,
6 including a no-contact order as -- which is sought in
7 the instant matter, predicated on 14 different criminal
8 offenses.

9 Defendants argue the association -- or the
10 members of the board have no standing or authority
11 under the act to seek the restraining order as the
12 association and the members of the board do not have a
13 domestic relationship with defendants and they're not
14 victims of domestic violence as defined in the act.
15 And the act bestows its jurisdiction on the -- on the
16 Family Division of family court.

17 Now in general, the basis for petitioning for
18 a restraining order or a protective order similar to
19 the one sought here includes, but is not limited to the
20 occurrence of domestic violence. For example, civil
21 harassment restraining orders are a cousin of sorts to
22 a domestic violence restraining order, but they
23 different in important respects, as any person may seek
24 a civil harassment order against any other person,
25 whether or not they have had an intimate relationship

1 or a domestic relationship in response to harassment,
2 stalking, or threat.

3 There is an article that addresses this
4 entitled, Free Speech and Civil Harassment Orders, in -
5 - at 64 Hastings Law Journal 781, in particular at Page
6 782 of that article.

7 Twenty-three states have statutes authorizing
8 courts to issue -- issue civil harassment restraining
9 orders upon a petition of harassment victims, and some
10 states issue similar orders through their general
11 equitable powers in the absence of statutory authority.
12 However, this Court has found no such civil harassment
13 legislation or precedent in New Jersey authorizing the
14 Court to issue the injunctive relief sought in the
15 present case. And as I say, there is no case law in
16 which the Chancery Court has exercised its general
17 equitable power to issue a restraining order of the
18 kind sought by the plaintiff here.

19 And in its reply, the plaintiff did not
20 provide authorities concerning the Court's jurisdiction
21 or addressing the Court's jurisdiction to grant the
22 relief requested, other than asserting that the Court
23 has equitable power that is flexible and unlimited. An
24 argument with which the Court does not concur. There
25 are reasonable limits placed on the power and authority

1 of a court or equity.

2 But beyond that, the Court notes the
3 Appellate Division's holding in Smith v. Moore, 298
4 N.J. Super. 121, (1987), where plaintiff and defendant
5 were former roommates and they shared a house on
6 weekends for three months one summer. And several
7 months after that the plaintiff began dating
8 defendant's exboyfriend and the defendant made a series
9 of harassing telephone calls to the plaintiff.
10 Thereafter the plaintiff sought and was granted a final
11 restraining order against the defendant under the
12 domestic -- the Prevention of Domestic Violence Act.
13 The defendant appealed the final restraining order.
14 The Appellate Division held the trial, which was the
15 Chancery Division, Family Part, lacked jurisdiction to
16 enter a restraining order because the parties did not
17 share the requisite domestic relationship upon which to
18 predicate jurisdiction under the act.

19 Further, instead of finding that the Chancery
20 Court has general equitable power to issue the
21 restraining order, the Appellate Division held that the
22 offense should have been prosecuted in the municipal
23 court as a disorderly persons offense under N.J.S.A.
24 2C:33-4(a).

25 Now here the factual grounds asserted by the

1 plaintiff to support the requested restraining order is
2 that defendants have conspired to murder Miss Stahl and
3 plaintiff believes that the threat is immanent as
4 plaintiff asserts that Mr. Rothstein has the knowledge
5 and skill to plan a murder and solicited volunteers to
6 travel to Virginia for the purpose of obtaining a gun.
7 Now if the plaintiff truly believes, as stated in Miss
8 Stahl's certification, that a threat of life or serious
9 bodily harm is immanent and substantial, that would
10 warrant a restraining order against defendants,
11 plaintiff should pursue its claim by alerting the
12 appropriate law enforcement agency to prosecute those
13 offenses under N.J.S.A. 2C:5-1, which is criminal
14 attempt; N.J.S.A. 2C:12-3, terroristic threats; or
15 N.J.S.A. 2C:33-4, harassment. This Court simply has no
16 jurisdiction based on statute or precedent to issue the
17 restraining order sought by plaintiff based on the
18 facts alleged here.

19 Moreover, if the Court were to grant the
20 injunctive relief sought, the Court would have to
21 determine that there is immanent and irreparable harm
22 to plaintiff as defendants have the intention to
23 proceed with the conspiracy or made a threat to cause
24 fear in plaintiff. All this irreparable harm, of
25 course, being the first prong of the four-part test in

1 Crowe v. DeGioia, 90 N.J. 126 at 135, (1982).

2 Now to make such a determination, the Court
3 essentially would find the defendants' conduct violates
4 criminal law, as it satisfies the elements of crimes
5 for criminal attempt or terroristic threats. This
6 Court will refrain from making that determination, as
7 it is a long-established rule that New Jersey courts
8 generally will not allow private plaintiffs to sue for
9 injunctive relief to enforce state penal laws. And
10 that is The Matter of the State Commission of
11 Investigation, 108 N.J. 35 at 41, (1987).

12 There's no question as to the absence of
13 jurisdiction in a court or equity to restrain
14 violations, ordinances, or crimes. And that's in Baird
15 v. Board, 110 N.J. Eq. 603 at 605, (E&A 1932).

16 So in light of this, the Court determines
17 that it has no jurisdiction to issue the injunctive
18 relief sought by the plaintiff.

19 Now in terms of standing, another issue which
20 has been raised here, Rule 4:26-1 provides that "Every
21 action may be prosecuted in the name of the real party-
22 in-interest. Standing requires a sufficient stake and
23 real adverseness with respect to the subject matter of
24 the litigation and substantial likelihood of harm to a
25 party in the event of an adverse decision." New Jersey

1 Chamber of Commerce v. New Jersey Election Law
2 Enforcement Commission, 82 N.J. 57 at 67, (1980).

3 An association has standing to sue on behalf
4 of its members if (a) it's members would otherwise have
5 standing to sue on their own right. (B) the interest
6 it seeks to protect are genuine to the -- I'm sorry,
7 are germane to the organization's purpose. And (c)
8 neither the claim asserted nor the relief requested
9 requires the participation of individual members in the
10 lawsuit. The Association for Fairness in Business v.
11 New Jersey, 82 F.Supp 2d 353 at 355, (D.N.J. 2000).

12 Here, the first prong of the Hunt test is
13 easily satisfied, and defendants do not dispute it.
14 Defendants argue that the association fails the second
15 prong of that Hunt test as there was only one board
16 member, the president, who was the subject of the
17 alleged conspiracy. And the purpose of the association
18 was not to prevent the association members from
19 expressing their criticism of the board.

20 The Court does not agree with the defendants'
21 argument there. It's true that the subject of the
22 alleged conspiracy is only one member of the board, but
23 the reason that she was the target of the criticism or
24 conspiracy is due to her capacity or position as the
25 president of the board. The main function of the board

1 is to govern and operate the association and serve the
2 community. The interest the association seeks to
3 protect here are not purely the safety or reputation of
4 the president of the board, but also avoidance of the
5 chilling affect that similar criticism or conspiracy
6 may cause upon the members of the association in
7 participating in the election and operation of the
8 board.

9 However, the Court finds that the plaintiff
10 has not satisfied the third prong of the Hunt test,
11 injunctive relief sought in plaintiff's complaint is
12 rooted solely on the alleged conspiracy against the
13 president of the board. The Court finds that Gloria
14 Stahl's participation in the lawsuit is necessary as
15 the award of injunctive relief, if it were appropriate,
16 predominantly depends on her belief that the threat to
17 her life or serious bodily harm is immanent and that
18 defendants have the intention and knowledge to proceed
19 with a conspiracy.

20 So the Court concludes that the association
21 lacks standing to bring this action on that basis.

22 Now in terms of preliminary injunctive relief
23 and the four-part test in Crowe v. DeGioia, I have
24 already alluded to.

25 And, of course, as explained by the Appellate

1 Division in Waste Management v. Union County Utilities
2 Authority, 399 N.J. Super. 508 at 520, (App. Div.
3 2008), the Court might take -- can take a less rigid
4 view of all four factors when the relief sought is
5 designed to preserve the status quo.

6 Additionally, when the plaintiff seeks -- or
7 the applicant seeks to preserve the status quo during
8 the suit's pendency, the Court may place less emphasis
9 on a particular Crowe factor if another factor requires
10 the issuance of the remedy.

11 Now in terms of the legal right underlying
12 the plaintiff's claim, the -- here the association
13 seeks to restrain or prohibit defendants from coming
14 within a hundred feet of the members of the board. As
15 I said, that has been slightly modified. The
16 injunction sought is for both preliminary and ultimate
17 relief. Plaintiff brings the claim against defendants
18 for violation of a nuisance provision of the master
19 deed. And that's in the complaint at Paragraph 10.

20 And that nuisance provision, which is
21 Paragraph 12 of the master deed is entitled nuisance --
22 and what I'll do, rather than read the entire paragraph
23 into the record is incorporate that by reference. The
24 master deed is attached to the verified complaint.

25 In the present matter, the alleged offensive

1 or hazardous activities are e-mail conversations
2 between defendants and other unit owners, which are not
3 "carried on in or upon the common elements or in any
4 unit," citing to the nuisance paragraph I just cited.

5 Also, it did not interfere with any unit
6 owner's peaceful possession and -- and use of property.

7 Further, nowhere in the governing document
8 does it indicate or state that the violation of the
9 master deed may warrant a restraining order against the
10 wrongdoer.

11 As discussed above, the Court finds no
12 legislation enacted in New Jersey authorizing the Court
13 to issue the injunctive sought in this case, nor does
14 the Court find any case law where the Chancery Court
15 has exercised its general equitable power to issue a
16 restraining order of the kind sought by the plaintiff
17 here. Plaintiff provides no authorities addressed to
18 the court's specific jurisdiction, other than to again
19 say that the power is unlimited. And so the Court does
20 not conclude -- cannot conclude the legal right
21 underlying the plaintiff's claim is well settled.

22 Likelihood of success on the merits. A party
23 seeking injunctive relief must demonstrate that it has
24 a reasonable likelihood of eventual success. And here
25 the Court finds that it's unlikely that plaintiff will

1 eventually succeed on the merits, plaintiff's -- as
2 plaintiff lacks standing to sue on the behalf of the
3 president of the board and the alleged conspiracy is
4 nothing more than a poorly composed sarcastic joke in
5 utter bad taste and inexplicable as to why the
6 defendants would engage in that kind of commentary.

7 But as ill-advised and as in poor taste as
8 it is, the Court concludes, based on the context of the
9 entire discussion, it does not pose an immediate and
10 irreparable threat of harm. It is completely
11 inappropriate, but it does not provide the basis for a
12 restraining order.

13 And here the plaintiff's -- the plaintiff
14 asserts defendants have conspired to murder Miss Stahl,
15 arguing that her death or any personal harm as the
16 result of the conspiracy is, per se, irreparable harm.

17 The Court does not find the alleged
18 conspiracy to actually exist, according to the context
19 of the subject e-mail conversations as I just said.

20 The plaintiff asserts that Kardos assembled
21 the unit owners to conspire and participate in the
22 murder, but the initial e-mail sent by Kardos shows
23 that he merely brought people's attention to the recent
24 election, the board election, and asked for ideas to
25 express the issue that the lowest vote recipient in --

1 is the president of the board. In a later e-mail he
2 explicitly agreed with another unit owner, Mr. Solomon,
3 that they should not be talking about killing anyone or
4 buying a gun, and acknowledged that Applebaum and
5 Rothstein were joking.

6 Applebaum made her inappropriate joke about
7 shooting Stahl, but then she apologized and admitted
8 she didn't mean it. She expressed the opinion that the
9 election of the board members did not have not much
10 impact on unit owners and they didn't need to do
11 anything because this is not our fight, as she said.

12 As to Rothstein's inappropriate comment,
13 agreeing with Applebaum's suggestion, so-called, the
14 Court concludes that any reasonable person under the
15 circumstances would understand that those comments are
16 nothing more than satirical jokes, again in terribly
17 bad taste.

18 As to plaintiff's assertions that Rothstein,
19 as a licensed attorney with experience possesses the
20 knowledge and skill to plan a murder in such a way as
21 to avoid arrest after the murder and the defendant's
22 continued the conspiracy related communications after
23 the e-mail conversation, these are arguments are
24 completely without basis.

25 The Court finds there's no continuous and

1 real conspiracy of murder here. There's no immediate
2 and irreparable harm, accordingly, to support the
3 requested injunctive relief.

4 And, finally, balancing the equities is the
5 fourth test, and plaintiff has failed to establish a
6 likelihood of success on the merits and that it will
7 suffer immediate irreparable harm; and, therefore, the
8 Court need not balance the equities. Even if the Court
9 were to engage in that exercise, it would find the
10 equity balances in favor of defendants, as issuing a
11 restraining order does not benefit plaintiff very much
12 at all since it may help to stop an alleged murder that
13 was never truly contemplated; while the restraint would
14 substantially limit defendants' freedom of movement or
15 daily life, as many members of the board reside in the
16 same building as the defendants.

17 So for all these reasons the application for
18 injunctive relief pendente lite is denied.

19 All right. We have a couple of motions on.

20 And I'll need an order on that please.

21 The -- we have two defendants who have filed
22 motions to dismiss under 4:6-2(e), the defendant Alan
23 Rothstein and the defendant Barbara Applebaum. We have
24 opposition from the plaintiff to the 406 -- Rule 4:6-
25 2(e) motions to dismiss. And replies filed by both of

1 the defendants.

2 So why don't we begin. Who would like to
3 argue first on the motions? They were filed the same
4 day.

5 MR. SAFFER: I think I will, Your Honor, if I
6 may.

7 THE COURT: Go ahead.

8 MR. SAFFER: Thank you.

9 Your Honor, for many of the reasons that Your
10 Honor articulated in denying the requests for
11 restraints, we believe the motion to dismiss should be
12 granted. As a matter of law, as Your Honor indicated,
13 a condominium unit owner cannot breach the nuisance
14 provision of the master deed by engaging in an e-mail
15 conversation in cyberspace with other unit owners.

16 Your Honor mentioned the fact that these
17 conversations were not carried on in or on the units,
18 did not affect the enjoyment -- did not infringement of
19 the enjoyment of the unit owners that way. And the
20 master deed does not provide for any type of injunctive
21 relief to address the conduct as ill-advised as it was
22 that occurred here.

23 Your Honor further indicated in His Honor's
24 remarks about the fact that there's a lack of
25 jurisdiction and there's a lack of standing to sue on

1 the half -- on behalf of the board. Your Honor also
2 indicated that any reasonable review of the ill-advised
3 e-mail conversation would not lead anyone to conclude
4 that this was an actual threat or an actual conspiracy.

5 So I don't want to sound flip, but we believe
6 this complaint was dead on arrival when it was filed.
7 There was no basis for it. This is purely and
8 exclusively a criminal matter. If -- it's apparently
9 in the hands of the criminal authorities, who
10 apparently are doing nothing about it.

11 And for all of those reasons we respectfully
12 request the motion to dismiss to be granted.

13 THE COURT: Thank you.

14 Miss Valle, would you like to say anything?

15 MS. VALLE: Your Honor, I'll rely on the
16 argues of Mr. Saffer and on my moving papers.

17 THE COURT: Yes. Thank you.

18 All right. Yes. Please, Mr. Byrne.

19 MR. BYRNE: Thanks, Your Honor. Real quick.

20 THE COURT: Sure.

21 MR. BYRNE: The -- I wanted to address the
22 standing conclusion you made in relation to the order
23 to show cause, which clearly bleeds into -- into this --
24 - these motions.

25 There's a -- in my view, there's a

1 distinction on the -- the -- the board member versus
2 association standing. When a board member says to me,
3 you know, this person said something, can I sue for
4 defamation. I say, well, that's a claim that belongs
5 to you individually, damages, that's the -- there's no
6 condominium damages financially that can be compensated
7 by the fact that you were somehow defamed, if you were
8 at all.

9 And so that's an individual claim. And my
10 view, those -- those claims are not sustainable
11 standing-wise vis-a-vis associations. This, however,
12 from a -- not a substantive perspective necessarily,
13 but from a -- just a simply a procedural standing
14 perspective. The association clearly has the right to
15 enforce a covenant. It may ultimately be determined
16 that the covenant was not violated, but from a standing
17 perspective, this is not a Gloria Stahl versus
18 individual claim. It is a condominium attempting to
19 create some sort of reasonable approach to existing
20 within the confines of the property. And, again,
21 substantively, the condominium could lose the claim,
22 but from a standing perspective the condominium does
23 have the right under the documents to enforce
24 covenants.

25 Differentiating from a -- an ability of a

1 board member to sue for defamation and collect
2 individual damages. Let's say one of these e-mails had
3 said not only we -- you know, should we shoot her,
4 should we do this, should we do that, but she's also a
5 bad person who's engage in these following crimes.
6 Perhaps there's a defamation claim there. But that's
7 not a condominium defamation claim. That's an
8 individual claim, I agree.

9 But whether the conduct itself is a violation
10 of the covenants is a condominium claim. That's just
11 my distinction.

12 THE COURT: I -- I -- yes.

13 MR. BYRNE: All right.

14 THE COURT: I understand perfectly well what
15 you're saying.

16 MR. BYRNE: Okay. The last thing is, there
17 is a provision in -- there is a provide in the master
18 deed that does empower the association to enforce the
19 rules and enforce the covenants.

20 So, I mean, I don't know -- I don't want the
21 -- I just want the record to be clear, there is a
22 provision in the master deed. It's in the papers that
23 we filed in opposition to the motion.

24 So there is a -- the ability to get that
25 relief.

1 THE COURT: Yes. Yes, there is.

2 MR. BYRNE: Okay. So --

3 THE COURT: I understand that.

4 MR. BYRNE: So like I said, in the end, this
5 motion for -- to dismiss, counsel's arguments are
6 reasonable, Your Honor's ruling with respect to the
7 order to show cause is -- is reasonable, you know, it
8 makes a lot of sense. But from a -- from a procedural
9 aspect, the condominium does need to have the ability
10 to file a complaint to try to enforce a covenant and
11 flesh out whether or not in fact it is a violation or
12 it's not. It could lose, but from a motion to dismiss
13 standpoint, we've got to allow the condominium -- an --
14 a condominium or any condominium to take a look at the
15 covenants and say, you know, this might be a violation,
16 let's bring an action. We could lose, but we have
17 standing and we have the ability to make the case to
18 get beyond the motion to dismiss. That's all I'm
19 arguing here.

20 Thank you, Judge.

21 THE COURT: Understood. All right. Thank
22 you.

23 All right. As I say, there are two motions
24 before the Court which followed entry of the order to
25 show cause which we dealt with a moment ago. And I do

1 have comments to make on the motions beyond the ruling
2 on the order to show cause seeking pendente lite
3 injunctive relief. I'll incorporate all that I said
4 earlier and I will now proceed with a further statement
5 of reasons in disposing of the motions, both filed on
6 January 31 of 2018. And there will be some necessary
7 repetition, so I ask everybody to bear with me.

8 The motions are brought by the defendants
9 Applebaum and Rothstein under 4:6-2(e), Rule 4:6-2(e).
10 And, of course, the standard under the rule is well
11 known. The Court must evaluate the adequacy of the
12 question pleading by determining whether a cause of
13 action is suggested by the facts. Printing Mart-
14 Morristown v. Sharp Electronics, 116 N.J. 739 at 746,
15 (1989).

16 The primary focus is upon the legal
17 sufficiency of the facts alleged on the face of the
18 complaint. Dismissal was mandated when the actual --
19 I'm sorry, when the factual allegations are palpably
20 insufficient to support a claim upon which relief can
21 be -- can be granted. And that's in Rieder v.
22 Department of Transportation, 221 Super. 547 at 552,
23 (App. Div. 1987).

24 However, the examination of a complaint's
25 allegation of fact required by the -- these principles

1 should be one that is at once painstaking and
2 undertaken with a generous and hospitable approach.
3 That's in Printing Mart at 746.

4 For purposes of a motion to dismiss, the
5 Court will accept as true the facts alleged in the
6 complaint and determine the motion based on the
7 pleadings alone, or documents referred to in the
8 pleadings the Court is also at liberty to review. And
9 these motions should be granted only with caution and
10 in the rarest of circumstances. That's in Ballinger v.
11 Delaware River Port Authority, 311 Super. 317 at 322,
12 (App. Div. 1998), bottoming that statement on Printing
13 Mart.

14 If the complaint states no basis for relief
15 and discovery would not provide one, dismissal of the
16 complaint is appropriate. Energy v. Department of
17 Environmental Protection, 320 N.J. Super. 59 at 64,
18 (App. Div. 1999). That opinion was affirmed at 170
19 N.J. 246 in 2001.

20 Ordinarily dismissal for failure to state a
21 claim is without prejudice. The Court has the
22 discretion to permit the plaintiff to amend the
23 complaint to allege additional facts and an effort to
24 state a cause of action. Hoffman v. Hampshire Labs,
25 405 N.J. Super. 105 at 116, (App. Div. 2009).

1 Now a cause of action for private nuisance
2 derives from the defendant's unreasonable interference
3 with the use and enjoyment of plaintiff's property.
4 Sands v. Ramsey Golf and Country Club, 29 N.J. 438 at
5 448, (1959).

6 With respect to the elements of the cause of
7 action for private nuisance, one is subject to
8 liability for a private nuisance if, but only if,
9 his/her conduct is a legal cause of the -- of an
10 invasion of another's interest in the private use and
11 enjoyment of land and the invasion is either
12 intentional and unreasonable, or unintentional and
13 otherwise actionable under rules controlling liability
14 for negligent or reckless conduct, or for abnormally
15 dangerous conditions or activities. Ross v. Lowits,
16 222 N.J. 494 at 505, (2015).

17 For private nuisance cases, the tests for
18 determining a private nuisance is not simply whether a
19 person is annoyed or disturbed, but whether the
20 annoyance or disturbance arises from an unreasonable
21 use of the neighbor's land. Rose v. Chaikin, 187
22 Super. 210 at 215, (Ch. Div. 1982).

23 Regardless of the analysis one might urge and
24 the consequent label attached, the issue in a nuisance
25 case logically depends on whether the offending

1 landowner somehow has made an negligent or unreasonable
2 use of his or her land when compared with the rights of
3 the parties injured on the adjoining lands. That's in
4 Burke v. Briggs, 239 N.J. Super. 269 at 274, (App. Div.
5 1990).

6 Here, plaintiff asserts that defendants'
7 conduct of conspiring -- that's defendants plural -- in
8 an e-mail conversation to shoot the president of the
9 board, assuming it's true, violated Paragraph 12 of the
10 master deed. There has been talk in the papers at
11 Paragraph 8, but we are focused on Paragraph 12. So
12 it's clear, perhaps I should incorporate it.

13 Paragraph 8 has to do with maintenance of the
14 property.

15 Paragraph 12 under the caption nuisance,
16 provides that no noxious, hazardous, or offensive
17 activity shall be carried on, in, or upon the common
18 elements or in any unit, nor shall anything be done
19 therein either wilfully or negligently which may be or
20 become an annoyance or a nuisance to the other
21 residence, or which interferes with the peaceful
22 possession and proper use of the units or the common
23 elements by the other owners. All valid laws, zoning
24 ordinances, and regulations of all governmental bodies
25 having jurisdiction over the development will be

1 observed.

2 Bear with me.

3 (Pause)

4 And I think I have most of, perhaps not all
5 of the master deed attached to the verified complaint,
6 but continuing.

7 Now the Court's determination is that
8 plaintiff's factual allegation -- again, assuming it's
9 true that defendants conspired to murder Miss Stahl via
10 e-mail conversation, does not constitute a nuisance as
11 described in Paragraph 12 of the master deed. After
12 all, these communications could have been going on from
13 anywhere in light of the portability of our electronic
14 devices under the current state of technology with
15 iPhones, iPads, and the rest.

16 But getting back to a restrictive covenant,
17 it is a contract. Homann v. Torchinsky, 296 N.J.
18 Super. 326 at 334, (App. Div.) Certification was
19 denied there at 149 N.J. 141, (1997).

20 Covenant language must be construed strictly.
21 Highland Lakes County Club v. Franzino, 186 N.J. 99 at
22 112, (2006).

23 Here the alleged offensive or hazardous
24 activities are e-mail conversations between defendants
25 and other unit owners which are not carry -- "carried

1 on in or upon the common elements or in any unit." The
 2 conversations were not making use of the unit or the
 3 common areas.

4 The plaintiff fails to plead in the complaint
 5 as to how the e-mail conversation might interfere with
 6 any unit owner's peaceful possession and use of his or
 7 her property. Thus, even were the Court to accept
 8 plaintiff's assertion in the complaint that defendants
 9 conspired to murder Miss Stahl via e-mail communication
 10 and the Court must, under the rubric of 4:6-2(e) accept
 11 that and it does, nowhere in the complaint does
 12 plaintiff assert that plaintiff's conduct had a -- had
 13 any impact or interference with the association or the
 14 board members enjoyment of their property, which is the
 15 point of Paragraph 12. Without pleading any facts
 16 concerning the essential element for a cause of action
 17 for private nuisance, the plaintiff fails to state a
 18 claim.

19 Further, the defendant's Applebaum and
 20 Rothstein argue that the e-mail conversation defendants
 21 had is protected by freedom of speech under both
 22 federal and state constitutions and it is not a true
 23 threat which would be unprotected. Defendants thus
 24 argue that it would be an intrusion on their
 25 constitutional rights or the subject speech to be found

1 in violation of the master deed. Citing Dublirer v.
 2 2000 Linwood Avenue Owners, Inc., 220 N.J. 71 at 73,
 3 (2014), which held that the board of directors house
 4 rule barring solicitation or distribution of written
 5 materials violated the free speech guarantee of the New
 6 Jersey Constitution because the important right of
 7 residents to speak about governance -- because of the
 8 important right of -- I'm sorry, of residents to speak
 9 about governance of their community.

10 The Court does not find that the present
 11 matter gives rise to a constitutional issue. Unlike
 12 Dublirer, the association argues that defendants' e-
 13 mail conversation -- and that's spelled D-u-b-l-i-r-e-
 14 r, by the way.

15 The association argues that defendants' e-
 16 mail conversation violates the provision of the -- the
 17 provision of the master deed, i.e., Paragraph 12. The
 18 association did not pass a "house rule" to restrict
 19 defendant's speech.

20 A restrictive covenant like a master deed is
 21 a contract as defendants themselves argue in their
 22 briefs. The contract of silence in which a party has
 23 made an enforceable promise to keep quiet about
 24 something is generally enforceable unless it's against
 25 public policy. There is an article on this point,

1 Promises of Silence, Contract Law, and Freedom of
2 Speech, found at 83 Cornell Law Review 261, 268, and
3 that is informative.

4 It's common that parties enter into a
5 contract of silence to protect privacy and reputational
6 interests. If the parties in the present matter
7 entered into a provision in the master deed preventing
8 the owners from making sarcastic jokes that would harm
9 -- about harming the board or -- or the association's
10 reputation, the board of the association's reputations,
11 the contract would probably be enforceable.
12 Nevertheless, there's no such provision in the master
13 deed and the Court does not find that plaintiff pleaded
14 sufficient facts to support its claim that defendants'
15 e-mail conversations violated the nuisance provisions
16 of the master deed.

17 Further, this Court does not have
18 jurisdiction to issue the restraining order sought by
19 the plaintiff as it requires the Court to make a
20 finding of criminal conduct as I related in my
21 statement of reasons dismissing the order to show cause
22 -- the order to show cause. And the Court further
23 finds the association lacks standing to sue on behalf
24 of Miss Stahl.

25 Now understanding that under most

1 circumstances the Court is obliged to dismiss a
2 complaint without present -- without prejudice -- I'm
3 sorry, without prejudice, and afford the plaintiff an
4 opportunity to replead, here the Court finds that would
5 be futile.

6 Acknowledging -- and I agree with plaintiff's
7 argument that Paragraph 8 is a covenant in a master
8 deed, it's an enforceable contract, and I agree that
9 the association has the right to sue to enforce that
10 covenant. But here, under any view, even assuming as I
11 have done and I am doing now, that there was a
12 discussion about -- about murder, about shooting the --
13 the board president, that does not -- it does certainly
14 violate tenants of social conduct, anywhere. It --
15 there -- and there was an apology and I think the
16 defendants understand the untoward and very unfortunate
17 tenor of this conversation, which is -- which is simply
18 inappropriate and well out of bounds.

19 And but be that all as it may, there is
20 simply no way to take that conversation and fit it
21 within the confines, even reading Paragraph 12 broadly,
22 which the Court isn't supposed to do, it's supposed to
23 be narrowly -- narrowly construed, but whether it be
24 broadly or narrowly construed, there is simply no way
25 to take that conversation and fit it within Paragraph

1 12 such that this would be a violation of the -- the
2 master deed and its undertaking. And the Court finds
3 that there is simply no -- no set of pleadings that
4 could possibly ever bring this violation within the
5 confines of Paragraph 12.

6 So for these reasons, I am taking the unusual
7 step of dismissing the complaint under 4:6-2(e) with
8 prejudice.

9 All right. That concludes the matter. I do
10 have orders on the motions.

11 Now I don't understand that Mr. Kardos joined
12 in the motions. He joined in the opposition to the
13 order to show cause, but not to the motions. I don't -
14 - I looked for a letter. I found one on the order to
15 show cause, but not on the motions. So --

16 MR. SAFFER: Is that right?

17 MR. BLOCK: That's correct.

18 THE COURT: -- that -- so I'm right about
19 that. So what do we do about that?

20 I mean, I don't see any difference. He would
21 simply have to come in here and -- and, you know, my
22 ruling would be the same, so.

23 MR. BYRNE: Right. He would -- if I can.

24 THE COURT: Yeah.

25 MR. BYRNE: He incidentally would even just

1 parrot what has already been filed and absent some
2 massive mistake of some sort would probably get the
3 same result, so.

4 THE COURT: Well, I could be wrong. I mean,
5 that's for sure.

6 MR. BYRNE: Oh, yeah. But it --

7 THE COURT: There could be an appeal.

8 MR. BYRNE: I mean --

9 MR. SAFFER: Yeah.

10 THE COURT: But just for --

11 MR. BYRNE: No, no, that -- right.

12 THE COURT: -- dealing with this now, I -- my
13 tendency -- my view would be the case would be
14 dismissed with prejudice as to all defendants.

15 MR. BYRNE: Right. No. I think -- you know,
16 there's certainly the rights of appeal. I just think
17 from a -- there doesn't appear to be a -- it appears to
18 be a waste of money and time to make Mr. Kardos, even
19 if he wrote it himself and then paid a lawyer to sign
20 it, it -- it still would be silly. Unless he did
21 something drastically different from what we've already
22 seen, the outcome is going to be the same, even if it's
23 appealed or something. It's still going to be the same
24 result.

25 So can I -- but I -- with that being said, I

1 really should speak to the client first. Because,
2 procedurally, he didn't file a motion to dismiss. So,
3 technically speaking, the case as to him is still open.
4 But I -- can I have a little bit of time to consult
5 with the client to see if we will just file a
6 stipulation of dismissal before he file -- before he
7 has to file a motion or anything like that?

8 THE COURT: Yes.

9 MR. BYRNE: Or file an answer.

10 THE COURT: Yes.

11 MR. BYRNE: Does that make sense?

12 THE COURT: Can you do that in a week please?

13 MR. BYRNE: Yes. Absolutely. I could do it
14 before then.

15 THE COURT: Okay.

16 MR. BYRNE: All right.

17 THE COURT: And let us know. Okay?

18 MR. BYRNE: Yes.

19 THE COURT: In the meantime, I'll enter the
20 orders as to the two moving defendants.

21 All right. Thank you everybody.

22 MR. BYRNE: If the -- one more thing, Judge.

23 THE COURT: Yeah.

24 MR. BYRNE: If the board elects to do that --
25 I'm sorry.

1 THE COURT: Yeah.

2 MR. BYRNE: I won't make -- I'm not intending
3 to do like a fancy production, I'll just send in a -- a
4 notice of dismissal.

5 THE COURT: Right.

6 MR. BYRNE: Okay.

7 THE COURT: That's all you need to do.

8 MR. BYRNE: Okay.

9 THE COURT: Okay. Thank you everybody.

10 MR. SAFFER: May -- may I just clarify one
11 thing, Judge?

12 I believe when you said about filing an
13 answer, I think Mr. Kardos did file an answer.

14 MR. BYRNE: Oh. Yeah.

15 MR. SAFFER: And a counterclaim. So I do
16 think that's still part of the record.

17 MR. BLOCK: He filed a counterclaim.

18 MR. BYRNE: That's right.

19 THE COURT: Okay.

20 MR. BYRNE: Hm.

21 THE COURT: But what -- what difference would
22 that make as to what we just talked about?

23 MR. SAFFER: No. I just -- well --

24 MR. BYRNE: It would make a difference if he
25 wants to proceed with his counterclaim is what you're

1 probably going to say, right?

2 MR. SAFFER: Yes.

3 MR. BYRNE: Even if -- even if the underlying
4 claim is -- is dismissed --

5 MR. SAFFER: The case -- the -- the
6 plaintiff's -- the complaint is dismissed with
7 prejudice. I guess the matter stays open because
8 there's a pending counterclaim.

9 THE COURT: I didn't realize that.

10 MR. BYRNE: Yeah.

11 MR. SAFFER: Yeah. That -- that's the only
12 reason I wanted to bring it to the Court's attention.

13 THE COURT: Right.

14 MR. BYRNE: I forgot about that.

15 MR. SAFFER: And we're going to be making an
16 application, so.

17 MR. BYRNE: So then I don't know -- I don't
18 know what we -- what we'll do.

19 THE COURT: You're going to be making an
20 application for what?

21 MR. SAFFER: We're going to make an
22 application under the frivolous litigation statute.

23 THE COURT: Okay.

24 MR. SAFFER: And Rule --

25 THE COURT: All right.

1 MR. SAFFER: -- 1:4-8.

2 THE COURT: Okay. Let me know then, Mr.
3 Byrne, please.

4 MR. BYRNE: Okay. I guess I can talk to Mr.
5 Kardos's lawyer, perhaps deal with it that way.

6 THE COURT: Yeah. I think that --

7 MR. BYRNE: All right.

8 THE COURT: -- would be a good idea. All
9 right.

10 MR. BYRNE: Thank you, Your Honor.

11 THE COURT: Thank you.

12 MR. SAFFER: Thank you, Judge.

13 MS. VALLE: Thank you, Judge.

14 (Proceedings concluded at 10:17 a.m.)
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CERTIFICATION

I, Lisa Mullen, the assigned transcriber, do hereby certify the foregoing transcript of proceedings on CourtSmart, Index No. from 9:18 a.m. to 10:17 a.m., is prepared to the best of my ability and in full compliance with the current Transcript Format for Judicial Proceedings and is a true and accurate compressed transcript of the proceedings, as recorded.

/s/ Lisa Mullen

Lisa Mullen

AD/T 413

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Agency Name

02/16/18

Date