

Via Federal Express

January 30, 2018

Morris County Superior Court
Chancery Division
Morris County Courthouse
Washington & Court Streets
Morristown, New Jersey 07963

Re: Fox Hills at Rockaway Condominium Association v. Applebaum
Docket No. C-130-17
Notice of Motion to Dismiss the Verified Complaint as to
Defendant Barbara Applebaum

Dear Madam or Sir:

I represent defendant Barbara Applebaum. Enclosed are the following:

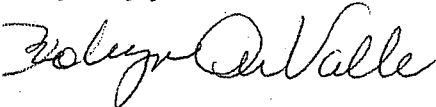
- Notice of Motion to Dismiss the Complaint as to Barbara Applebaum (original and one copy)
- Letter brief in support of the motion;
- Proposed form of Order (original and two copies);
- Certification of Service;
- Stamped, self-addressed envelope for the Court's order, when issued.

Kindly forward these documents to the Honorable Robert J. Brennan.

If there is a fee for this motion, kindly charge my attorney collateral account no. 142343.

Thank you for your assistance in these regards.

Very truly yours,



Robyn Ann Valle

Enclosures

C: Ms. Barbara Applebaum (via email)
David J. Byrne, Esq., Attorney for Plaintiff (djb@ansellgrimm.com)
Michael A. Saffer, Esq., Attorney for Alan Rothstein (msaffer@lawfirm.ms)
Gary W. Moylen, Esq., Attorney for Paul Kardos (gmoylen@comcast.net)

Robyn Valle, Esq.
Robyn Ann Valle PC
Attorney ID No. 015501995
12 2nd Avenue
Denville, New Jersey 07834
Tel. 973-586-9100
Attorney for Barbara Applebaum

FOX HILLS AT ROCKAWAY
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff,

vs.

BARBARA APPLEBAUM, PAUL KARDOS,
and ALAN ROTHSTEIN,

Defendants,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO: C-130-17

Civil Action

NOTICE OF MOTION
TO DISMISS THE COMPLAINT
AS TO BARBARA APPLEBAUM
FOR FAILURE TO STATE A CLAIM


TO: David J. Byrne, Esq.
Ansell Grimm & Aaron P.C.
214 Carnegie Center, Suite 112
Princeton, NJ 08540

PLEASE TAKE NOTICE that I will apply to the above named Court, located at Washington and Court Streets, Morristown, New Jersey 07960, on Friday, February 16, 2018, at 9 a.m. or as soon thereafter as counsel may be heard, for an Order dismissing the action pursuant to Rule 4:6-2(e) as to defendant Barbara Applebaum. A proposed form of Order is attached. This motion is made upon the following grounds: Plaintiff has failed to state a cause of action for which relief may be granted.

PLEASE TAKE FURTHER NOTICE that defendant shall rely on the brief in support hereof; and

PLEASE TAKE FURTHER NOTICE that defendant requests oral argument pursuant to Rule 1:6-2(d) if opposition is filed.

Date: January 30, 2018


Robyn Ann Valle, Esq.
Attorney for Barbara Applebaum

January 30, 2018

Hon. Robert J. Brennan
Chancery Division, General Equity Part
Morris County Superior Court
Washington & Court Sts.
Morristown, NJ 07963-0910

Re: Fox Hills at Rockaway Condominium Association v. Applebaum
Docket No. C-130-17

Dear Judge Brennan:

I represent defendant Barbara Applebaum. Kindly accept this letter brief in support of the motion to dismiss the Verified Complaint against her on the grounds that it fails "to state a claim upon which relief can be granted." See R. 4:6-2(e).

STANDARD OF REVIEW

In deciding a motion to dismiss, a judge must examine the allegations in the complaint for "legal sufficiency." Rieder v. State Dept. of Transportation, 221 N.J. Super. 547, 552 (App. Div. 1987). The question in determining such sufficiency is "whether a cause of action is suggested by the facts." Velantzas v. Colgate-Palmolive Co. 109 N.J. 189, 192 (1988). A court's inquiry is confined solely to whether those facts, which are deemed admitted for the purpose of the motion, constitute a cause of action. Rieder, 221 N.J. Super. at 552. This legal standard requires that a complaint be scrutinized with liberality to ascertain if a viable cause of action exists, while according the plaintiff all legitimate inferences. See Printing Mart v. Sharp Electronics, 116 N.J. 739, 772 (1989); Spring Motors Distributors v. Ford Motor Co., 191 N.J. Super. 22, 29-

30 (App. Div. 1983), *aff'd in part and rev'd in part on other grounds*, 98 N.J. 55 (1985). Where, however, the alleged facts are "palpably insufficient to support a claim upon which relief can be granted," dismissal is warranted. Riedel, 221 N.J. Super. at 552.

Under a Rule 4:6-2(e) motion, documents outside the pleading may be presented to the court. Where those documents are "integral to or explicitly relied upon" in the pleading, they may be taken into consideration without converting the motion to dismiss into a motion for summary judgment. Contel Global Mktg., Inc. v. Dreifuss, No. A-3542-08T3, 2010 N.J. Super. Unpub. LEXIS 241, *22 (App. Div. Feb. 4, 2010) (quoting In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997)); see also Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (noting that in deciding a motion to dismiss, a court may consider "allegations in the complaint . . . and documents that form the basis of a claim" (citation omitted)); New Jersey Citizen Action, Inc. v. County of Bergen, 391 N.J. Super. 596, 605 (App. Div. 2007) (finding that on a motion to dismiss, a court may properly rely on documents referred to in the complaint, even if not attached as exhibits to the complaint).

Here, the Association's complaint is based exclusively on an email exchange among defendants and others, yet, tellingly, the Association failed to attach them to the Verified Complaint. Since the emails are both integral to the allegations and totally relied upon by plaintiff, they are included in the attached Exhibit A.¹ In order to fairly decide this motion to dismiss, it is respectfully submitted that this Court must consider

¹ I ask Your Honor to take judicial notice that these are the emails referred to by plaintiff, as ¶ 3 in the Verified Complaint references the first email posted at 8:27 a.m. on December 6, 2017, and ¶ 7 refers to an email posted at 11:11 a.m. on December 7, 2017.

the emails in their totality, rather than just the distorted and duplicitous rendition asserted by the Association in its Verified Complaint.

ALLEGATIONS

Defendant Barbara Applebaum is the owner of a unit that is situated in Fox Hills at Rockaway Condominium Association ("Association"). Verified Complaint ¶ 2. The allegations here are that approximately twenty-five members of the Association, including Ms. Applebaum and defendants Paul Kardos and Alan Rothstein, engaged in email communications regarding a recent Board of Directors election, and that during those communications Mr. Kardos "assembled" unit owners "who he believed might be willing to participate in his conspiracy, and to participate in the actual shooting" of the Board president. Verified Complaint ¶¶ 3, 4 & 6. The alleged "conspiracy" included a plan to drive to Virginia in order to purchase a gun. Verified Complaint ¶ 6. Further, defendants' alleged efforts with regard to the planned murder extended beyond the email communications. Verified Complaint ¶ 9.

These allegations are based not on facts, but on plaintiff's erroneous legal conclusion that defendants are "co-conspirators," who "assembled" and "conspired" to "murder" the Board president, as well as groundless speculation that the conspiracy was ongoing. Verified Complaint ¶¶ 4, 5 & 9. While legitimate inferences are to be drawn in favor of plaintiff, "a court need not credit a complaint's 'bald assertions' or 'legal conclusions' when deciding a motion to dismiss." See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997) (considering a motion to dismiss under federal rule 12(b)(6)). In other words, these conclusory accusations should not be considered by this Court in deciding whether the matter should be dismissed. The question comes

down to the one purported "fact" alleged by the Association against Ms. Applebaum: Does her query "shoot her?" support plaintiff's purported cause of action, particularly when two hours later she apologized for any offense given, described it as a "smart ___ remark" and wrote: "Of course I don't mean it"? Ex. A, p.2.

LEGAL ARGUMENT

Despite the serious criminal nature of the allegation, the cause of action asserted by plaintiff is civil action for *violation of the Master Deed and By-Laws*. The provision in the By-Laws upon which plaintiff relies is as follows:

(8) Restrictions. This Master Deed is subject to all covenants, restrictions, and easements of record including the following:

12. Nuisance. No noxious, hazardous, or offensive activities shall be carried on, in or upon the Common Elements or in any Unit nor shall anything be done therein either willfully or negligently which may be or become an annoyance or nuisance to the other residents or which interferes with the peaceful possession and proper use of the Units or the Common Elements by the other Owners. All valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction over the Development shall be observed.

[Verified Complaint, Exhibit A ¶ 12.]

In order to determine whether Ms. Applebaum's email comment violated the restrictive covenants, the nuisance provision must be considered in the context of the entire section in which it appears. So, for example, a unit owner may not: obstruct any access to the common elements; hang out clothes, sheets, laundry, etc.; keep more than two dogs in the unit; make changes that "impair the structural integrity" of the unit; or use the unit as a "dumping ground for rubbish." Verified Complaint, Exhibit A ¶¶ 5, 10, 11, 13 & 15. These provisions provide a clear and unambiguous recital of prohibited activities. Email conversations in cyberspace are not "carried on, in or upon the

Common Elements or in any Unit" and do not in any way interfere with other owners' peaceful possession or proper use of their respective units or the common elements.

Moreover, there is nothing in the governing documents to indicate that the Association's legitimate purpose is to prevent Association members from expressing their criticism of the Board – no matter how inartful-- either verbally or in writing. Here, Ms. Applebaum simply exercised her absolute right to express her thoughts about the Board's choice of its president, as guaranteed by the New Jersey Constitution: "Every person may freely speak, write and publish his [or her] sentiments on all subjects, being responsible for the abuse of that right." N.J. Const. art. I, ¶ 6. Our courts have extended this right to residents in common interest communities.

In Dublirer v. 2000 Linwood Ave. Owners, Inc., a resident and regular critic of the co-op's Board of Directors, was interested in running for a Board seat and asked to distribute campaign materials in the building. Dublirer, 220 N.J. 71, 73 (2014). Under the guise of "quiet enjoyment of property," the Board denied the request, citing a "house rule" barring solicitation or distribution of written materials; this, despite the fact that the Board itself had distributed written materials in the building critical of Board opponents. Id. The resident filed a lawsuit claiming that the house rule was unconstitutional. Id. The matter went up on appeal, id. at 77, and our Supreme Court ultimately affirmed the "important right of residents to speak about the governance of their community," id. at 74, holding that the Board's house rule violated the free speech guarantee in New Jersey's Constitution, id. at 89.

A review of all the emails at issue here lends robust support to a determination that Ms. Applebaum's query was merely irreverent, tongue-in-cheek, satirical criticism of the Board's governing body. As such, her speech is protected. See Hustler Magazine v. Falwell, 46 U.S. 444, 447 (1969) (holding that a cartoon depicting a nationally known minister and political commentator engaged in a drunken rendezvous in an outhouse with his mother was protected speech). True, the First Amendment does not protect all threats, but in order for speech to qualify as illegal advocacy of violence, without the protection of the First Amendment, the bar is high. Only "where such advocacy is directed to inciting or producing imminent lawless action *and is likely to incite or produce such action*" can this speech be proscribed. Brandenburg v. Ohio, 395 U.S. 444, 447 (1969) (emphasis added).

The Association fails to proffer any fact to indicate that Ms. Applebaum intended to incite or engage in an imminent violent act. To the contrary, plaintiff acknowledges that the email communications pertained to "the results of the Association's recent annual meeting and Board of Directors . . . election." Verified Complaint ¶ 3. In view of the specious, frivolous, and wasteful nature of the within action, it seems incongruous to quote the late Justice William O. Douglas, but his words seem particularly appropriate:

"Every idea is an incitement. It offers itself for belief, and, if believed, it is acted on unless some other belief outweighs it or some failure of energy stifles the movement at its birth. The only difference between the expression of an opinion and an incitement in the narrower sense is the speaker's enthusiasm for the result. Eloquence may set fire to reason. But whatever may be thought of the redundant discourse before us, it had no chance of starting a present conflagration."

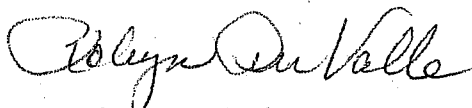
[Brandenburg, 395 U.S. at 452 (Douglas, J., concurring) (quoting Gitlow v. New York, 268 U.S. 652, 673 (1925)).]

CONCLUSION

The allegations in the Verified Complaint are manifestly inadequate to support plaintiff's claim for relief. Nowhere within its four corners may it be gleaned that Ms. Applebaum seriously intended imminent physical harm to anyone or conducted any "noxious, hazardous, or offensive" activity in her unit or on the Common Elements. Her query, "Shoot her?" ended with a question mark – not an exclamation point. She has the inalienable right to be sarcastically critical of the Board members and to question the credibility and judgment of its leadership. The purported cause of action – free speech as a violation of the restrictions -- is pretextual. If translated into realspeak, the cause of action would read: "We are annoyed with your criticism of the Board, and we want to silence you and prevent you from coming to any future Board meetings."

Given the baseless audacity with which the Verified Complaint was filed, the matter should be dismissed with prejudice.

Respectfully submitted,



Robyn Ann Valle

EXHIBIT A

#3

Subject: Re: Board

I AGREE. Who will to drive to Virginia to buy the gun? However, we should all write the bd that the least vote winner should not be president. That is just plain nuts. It is a KICK IN THE PANTS to ALL OF US. Maybe a Petition would even be a better way since it would send a clear message.

On Wed, Dec 06, 2017 at 09:46 AM, Barbara wrote:

#2

Shoot her?

-----Original Message-----

From: Paul Kardos <pkardos1@yahoo.com>
To: Barbara Applebaum <baumappl@aol.com>; Gene Borgna <ejbklb@gmail.com>; ERNEST BLICKERS <joemie@att.net>; Rudi Sabatino <mpasab@optonline.net>; Ben Suntag <gatnus@gmail.com>; Laura Greenberg <mrssugargeorge@aol.com>; Walter Reiling <wsrmmj@aol.com>; Munro Ross <muncee@optonline.net>; Gwen Franklin <gwenfranklin01@gmail.com>; David Bishop <equicon1@aol.com>; Lloyd Kishinsky <lkishinsky@gmail.com>; David Solomon <dsbraces@gmail.com>; ALAN ROTHSTEIN <abrrock@optimum.net>; Anne Gallagher <gallaghera@att.net>; Kathy Mack <kmackaroni1@verizon.net>; Sheila and Jerry Frost <jsfrost2@verizon.net>; Barbara Grimaldi <sirdavydickens@gmail.com>; Lenny Richman <annlen1@verizon.net>; Marion Aaronson <maaronson1@optimum.net>; Joseph & Janice Wolkenberg <janjoe2@optonline.net>; Geoffrey Kantor <geoffkantor@gmail.com>; Sue Flannery <sskf331@aol.com>
Sent: Wed, Dec 6, 2017 8:27 am
Subject: Board

Current board, votes received when elected (percent of total vote):

Peter Forman 405 (82%)
Eleanor Hunt 358 (75%)
Connie Kelly 347 (78%)
Jay Amdur 314 (66%)
Barrie Werfel 308 (69%)
Bonnie Cohen 279 (59%)
Gloria Stahl 268 (54%)

#1

Does anyone find it odd that the least favorite director is the president? Shouldn't one of the top vote getters be the pres.? Any Ideas on how to correct this situation?

Paul, what is your opinion,

On Wed, Dec 06, 2017 at 12:01 PM, Barbara wrote:

Sorry, if I offended anyone. It was just a smart_ _ _ remark on my part. Of course I don't mean it.

As far as I'm concerned, they are the Board, and they can elect whomever they want to be the leader. I don't think it means much to us, the residents. Barbara

-----Original Message-----

From: David Solomon <dsbraces@gmail.com>

To: Barbara <baumappl@aol.com>

Cc: Alan Rothstein <abrock@optimum.net>; Paul Kardos <pkardos1@yahoo.com>; Eugene Borgna <ejbklb@gmail.com>; joernie <joernie@att.net>; rmpasab <rmpasab@optonline.net>; gatnus <gatnus@gmail.com>; mrssugargeorge <mrssugargeorge@aol.com>; wsrnmj <wsrmnj@aol.com>; Munro Ross <muncee@optonline.net>; gwenfranklin01 <gwenfranklin01@gmail.com>; equicon1 <equicon1@aol.com>; lkishinsky <lkishinsky@gmail.com>; gallaghera <gallaghera@att.net>; kmackaroni1 <kmackaroni1@verizon.net>; jsfrost2 <jsfrost2@verizon.net>; Barbara Grimaldi <sirdavydickens@gmail.com>; annlen1 <annlen1@verizon.net>; maaronson1 <maaronson1@optimum.net>; janjoe2 <janjoe2@optonline.net>; geoffkantor <geoffkantor@gmail.com>; sskf331 <sskf331@aol.com>

Sent: Wed, Dec 6, 2017 11:38 am

Subject: Re: Board

I don't think we should not be talking about killing anyone or buying guns, even though you are not serious. Statements like that lead to trouble. For what it is worth an insider is telling me that there will be a change. Let's hope that person is right. It would be healthy for Board and the Fox Hills community if a change in leadership does occur.

David

On Wed, Dec 6, 2017 at 10:44 AM, Barbara <baumappl@aol.com> wrote:

I agree with Gene that this is not our fight. They can elect whomever they want. Barbara

-----Original Message-----

From: ALAN ROTHSTEIN <abrock@optimum.net>

To: Barbara <baumappl@aol.com>

Cc: Paul Kardos <pkardos1@yahoo.com>; Gene Borgna <ejbklb@gmail.com>; Ernie Bickers <joernie@att.net>; rmpasab <rmpasab@optonline.net>; Ben Suntag <gatnus@gmail.com>; mrssugargeorge <mrssugargeorge@aol.com>; wsrnmj <wsrmnj@aol.com>; muncee <muncee@optonline.net>; gwenfranklin01 <gwenfranklin01@gmail.com>; equicon1 <equicon1@aol.com>; lkishinsky <lkishinsky@gmail.com>; dsbraces <dsbraces@gmail.com>; gallaghera <gallaghera@att.net>; kmackaroni1 <kmackaroni1@verizon.net>; Jerry Frost <jsfrost2@verizon.net>; sirdavydickens <sirdavydickens@gmail.com>; annlen1 <annlen1@verizon.net>; maaronson1 <maaronson1@optimum.net>; janjoe2 <janjoe2@optonline.net>; geoffkantor <geoffkantor@gmail.com>; sskf331 <sskf331@aol.com>; Paul Kardos <pkardos1@yahoo.com>; Ernie Bickers <joernie@att.net>

Sent: Wed, Dec 6, 2017 10:36 am

On Thursday, December 07, 2017 05:40:20 PM EST, Barbara <baumappl@aol.com> wrote:

Would someone please explain to me, other than running 4 meetings a year, what is the job of the president of the board?

-----Original Message-----

From: Paul Kardos <pkardos1@yahoo.com>

To: Barbara <baumappl@aol.com>; ALAN ROTHSTEIN <abrrock@optimum.net>

Cc: dsbraces <dsbraces@gmail.com>; Gene Borgna <ejbkib@gmail.com>; Ernie Bickers <joernie@att.net>; rmpasab <rmpasab@optonline.net>; Ben Suntag <gatnus@gmail.com>; mrssugargeorge <mrssugargeorge@aol.com>; wsrnj <wsrnj@aol.com>; muncee <muncee@optonline.net>; gwenfranklin01 <gwenfranklin01@gmail.com>; equicon1 <equicon1@aol.com>; lkishinsky <lkishinsky@gmail.com>; gallaghera <gallaghera@att.net>; kmackaroni1 <kmackaroni1@verizon.net>; Jerry Frost <jsfrost2@verizon.net>; sirdavydickens <sirdavydickens@gmail.com>; annlen1 <annlen1@verizon.net>; maaronson1 <maaronson1@optimum.net>; janjoe2 <janjoe2@optonline.net>; geoffkantor <geoffkantor@gmail.com>; sskf331 <sskf331@aol.com>; dcbraces <dcbraces@gmail.com>; Cuthbert Twilley <ctwilley00@yahoo.com>

Sent: Thu, Dec 7, 2017 3:17 pm

Subject: Re: Board

I agree with Dave - "we should not be talking about killing anyone or buying guns, even though you are not serious." We can make the changes required through persuasion and, if necessary, litigation. Hmmm... if the board keeps electing a president who is so unpopular (and for the past 3 years has held office illegally), maybe we should change the bylaws so that the president is elected directly by homeowners, just like the president of the USA. No electoral college though, popular vote only!

Paul

On Thursday, December 07, 2017 11:11:10 AM EST, ALAN ROTHSTEIN <abrrock@optimum.net> wrote:

Barbara,

I don't know how you can say that. Why have a person that is arrogant and nasty and got the least votes as the president. How can anyone respect such a person. Since when does the person with least votes become president. That is not only dishonest but

as I said previously a kick in the pants to all of us. A directorship is not supposed to be a second career. That is why a Petition is very applicable.

Barbara: Your remark may have been a smart ... one but, if I could get away with it I'd buy a gun and pull the trigger.

Subject: Re: Board

From: pkardos1@yahoo.com
To: abrrock@optimum.net; baumappl@aol.com
Cc: dsbraces@gmail.com; ejbklb@gmail.com; joernie@att.net; rmpasab@optonline.net;
gatnus@gmail.com; mrssugargeorge@aol.com; wsrnj@aol.com; muncee@optonline.net;
gwenfranklin01@gmail.com; equicon1@aol.com; lkishinsky@gmail.com; gallaghera@att.net;
kmackaroni1@verizon.net; jsfrost2@verizon.net; sirdavydickens@gmail.com; annlen1@verizon.net;
maaronson1@optimum.net; janjoe2@optonline.net; geoffkantor@gmail.com; sskf331@aol.com;
adubovy@yahoo.com; lucien371@gmail.com
Bcc: hloconnor@optonline.net
Date: Friday, December 08, 2017 05:24:29 PM EST

#12

The board must decide anything and everything by voting, and the president is entitled to only one vote out of 7, the same as any other director.

Since the president "shall preside at all meetings of unit owners," and since no bylaw or rule specifies how a meeting is to be conducted (e.g. Sturgis Code, Roberts Rules, Cushing Manual), the president is free to ignore the fundamental right of unit owners to conduct business at their own meeting.

Paul

#11

On Friday, December 08, 2017 10:57:38 AM EST, Barbara <baumappl@aol.com> wrote:

I don't find the position, even after reading Article V, Section 4, all that powerful.

B

-----Original Message-----

From: Paul Kardos <pkardos1@yahoo.com>
To: abrrock <abrrock@optimum.net>; Barbara <baumappl@aol.com>
Cc: dsbraces <dsbraces@gmail.com>; ejbklb <ejbklb@gmail.com>; joernie <joernie@att.net>; rmpasab <rmpasab@optonline.net>; gatnus <gatnus@gmail.com>; mrssugargeorge <mrssugargeorge@aol.com>; wsrnj <wsrnj@aol.com>; muncee <muncee@optonline.net>; gwenfranklin01 <gwenfranklin01@gmail.com>; equicon1 <equicon1@aol.com>; lkishinsky <lkishinsky@gmail.com>; gallaghera <gallaghera@att.net>; kmackaroni1 <kmackaroni1@verizon.net>; jsfrost2 <jsfrost2@verizon.net>; sirdavydickens <sirdavydickens@gmail.com>; annlen1 <annlen1@verizon.net>; maaronson1 <maaronson1@optimum.net>; janjoe2 <janjoe2@optonline.net>; geoffkantor <geoffkantor@gmail.com>; sskf331 <sskf331@aol.com>; dcbraces <dcbraces@gmail.com>; ctwilley00 <ctwilley00@yahoo.com>
Sent: Thu, Dec 7, 2017 11:56 pm
Subject: Re: Board

#10

see bylaw article V section 4

Robyn Valle, Esq.
Robyn Ann Valle PC
Attorney ID No. 015501995
12 2nd Avenue
Denville, New Jersey 07834
Tel. 973-586-9100
Attorney for Barbara Applebaum

FOX HILLS AT ROCKAWAY
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff,

vs.

BARBARA APPLEBAUM, PAUL KARDOS,
and ALAN ROTHSTEIN,

Defendants,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO: C-130-17

Civil Action

ORDER DISMISSING THE COMPLAINT
AS TO BARBARA APPLEBAUM

This matter being opened to the Court by Robyn Ann Valle, attorney for defendant Barbara Applebaum, on notice to all counsel of record, on motion returnable February 16, 2018, for an Order to dismiss the Verified Complaint against said defendant for failure to state a claim upon which relief may be granted, and the Court having considered the motion and good cause appearing, it is on this _____ day of February 2018,

ORDERED that the Verified Complaint of the plaintiff is hereby stricken, and the action against this defendant shall be dismissed with prejudice.

Robert J. Brennan, J.S.C.

This motion was:

___ Opposed

___ Unopposed

Robyn Valle, Esq.
Robyn Ann Valle PC
Attorney ID No. 015501995
12 2nd Avenue
Denville, New Jersey 07834
Tel. 973-586-9100
Attorney for Barbara Applebaum

FOX HILLS AT ROCKAWAY
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff,

vs.

BARBARA APPLEBAUM, PAUL KARDOS,
and ALAN ROTHSTEIN,

Defendants,

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MORRIS COUNTY
DOCKET NO: C-130-17

Civil Action

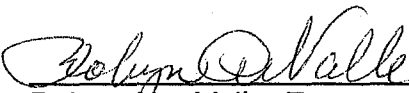
CERTIFICATION OF SERVICE

I hereby certify that on January 30, 2018, copies of the following documents were sent by Federal Express overnight delivery and email transmission to David J. Byrne, Esq., and by regular mail from the Denville U.S. Post Office and by email transmission to Michael A. Saffer, Esq., and Gary W. Moylen, Esq.:

- Notice of Motion to Dismiss the Complaint as to Barbara Applebaum;
- Letter brief to the Honorable Robert J. Brennan; and
- Proposed form of Order.

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.

Date: January 30, 2018



Robyn Ann Valle, Esq.
Attorney for Barbara Applebaum