
Superior Court of New Jersey

CHAD ROSSY,

Plaintiff-Appellant,

v.

MAYOR AND COUNCIL OF THE
TOWNSHIP OF MOUNT OLIVE,
MOUNT OLIVE POLICE
DEPARTMENT, POLICE CHIEF
STEPHEN BEECHER AND JOHN
DOES 1-5,

Defendants-Respondents.

* APPELLATE DIVISION
* DOCKET NO. A-1436-23
*
* DOCKET NO. BELOW:
* MRS-L-1497-23
*
* ON APPEAL FROM:
* SUPERIOR COURT OF NJ
* LAW DIV, MORRIS COUNTY
*
*
*
* SAT BELOW:
* Hon. Stephan C. Hansbury, JSC

**PLAINTIFF-APPELLANT'S
AMENDED APPEAL BRIEF**

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TABLE OF CONTENTS
Appeal Brief

	<u>Page</u>
PROCEDURAL HISTORY	1
STATEMENT OF FACTS	1
LEGAL ARGUMENT	4
POINT I - The Court Below Failed to Apply Prevailing Case Law (Pa-25)	4
CONCLUSION	8

TABLE OF JUDGMENTS, ORDERS & RULINGS

Order denying Plaintiff's Motion to Stay Promotion filed 12/22/23	Pa-24
Order granting Defendant's Motion to Dismiss filed 12/22/23	Pa-25

TABLE OF AUTHORITIES

CASES	<u>Page</u>
<u>DiCristofaro v. Laurel Grove Men-L Park</u> , 43 N.J. Super. 244 (App. Div. 1957)	6
<u>Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.</u> , 237 N.J. 91 (2019)	7
<u>Green v. Morgan Props.</u> , 215 N.J. 431 (2013)	5
<u>Printing Mart v. Sharp Electronics</u> , 116 N.J. 739 (1989)	4-7
<u>Smith v. SBC Commc'ns Inc.</u> , 178 N.J. 265 (2004)	7
<u>Velantzis v. Colgate Palmolive Co.</u> , 109 N.J. 189 (1988)	6

PROCEDURAL HISTORY

Plaintiff filed a Complaint in the Superior Court of New Jersey, Morris County, Law Division on or about August 29, 2023, alleging a hostile work environment and prohibited retaliatory actions (Pa-1).

On September 21, 2023, Plaintiff filed a Motion to Stay the Promotion Process (Pa-7) with supporting Certification (Pa-8). On October 5, 2023, Defendants filed a Cross-Motion to Dismiss the Complaint (Pa-10) with Certification of Defendant Beecher (Pa-12). Subsequently, on November 14, 2023, Plaintiff filed a supplemental Certification (Pa-20) in opposition to Defendant's Motion.

On December 22, 2023, the Court heard oral argument on both Motions (1T).¹ By two separate Orders entered on that date, the Court denied Plaintiff's Motion (Pa-24) and granted Defendants' Motion to Dismiss (Pa-25).

On or about January 15, 2024, Plaintiff filed a Notice of Appeal followed by an Amended Notice of Appeal on January 24, 2024 (Pa-27).

STATEMENT OF FACTS

The Motion pending in the trial Court, from the viewpoint of the Defendant was a R. 4:6-2(e) which is a failure to state a claim upon which relief can be granted which essentially was that the Plaintiff's relief should come from the Rules

¹ 1T - Transcript of Motion Hearing on 12/22/23.

and Regulations of the Mount Olive Police Department. The Plaintiff alleges that the Chief of Police manipulated the process for the sole purpose of depriving him to be considered for promotion since he was no. 1 on the list and that expired once the Chief put in a new process of five months as opposed to one year (Pa-1).

The Certifications of the Plaintiff (Pa-8 and Pa-20) clearly establish that the process of extending a list for one year preceded the list on which the Plaintiff was no. 1, and was reinstated after the Plaintiff was removed from the list because the process of five months expired one month before the next promotion would be considered. This is not a failure to promote. This is a deliberate policy change to remove the Plaintiff who was no. 1 on the list and would have been no. 1 for the next promotion if the Chief had not reduced the process to five months, as opposed to every other time when it was one year or more.

As no. 1 on the list, the Plaintiff had the right to be considered for promotion. Because the Chief changed the process from one year to five months, which ended one month prior to the next retirement. The Chief removed the Plaintiff from the no. 1 position and started the process all over again thereby removing the Plaintiff who worked his way from no. 3 to no. 2 to no. 1. This was not a process that expired. This is a process that was changed for one reason and one reason only and that was to deprive the Plaintiff of the no. 1 position prior to the next available promotion.

In order to have his case decided pursuant to the Rules and Regulations of the Township, the Plaintiff's complaint must be that "I was overlooked for promotion," or "I was not promoted." In this case, however, by manipulating the process and reducing a process of one year to five months which happened to coincide with the next retirement, is clearly a §1983 cause of action.

The Plaintiff's Certification (Pa-20)

As part of the response to the Defendants' R. 4:6-2 Motion, the Plaintiff on November 14, 2023, filed a Certification (Pa-20). There, it is clearly set forth that the procedure in Mount Olive was to extend the list for at least a year. At no other time was the list less than a year. If the list had continued for that year, the Plaintiff would have been no. 1. Prior no. 1 candidates were promoted. The only way the Chief could hinder this promotion was to change the process.

At ¶29 (Pa-21) of the Plaintiff's Certification, it is stated:

The Chief maneuvered the five-month extension from May to October, so it wouldn't cover the Hetzel retirement in November.

At ¶30 (Pa-21), the Plaintiff stated:

The list was deliberately shortened, so that the Hatzel retirement could not be included in that list because at that point, I was no. 1 on the list to be promoted.

The Plaintiff acquired a right to be considered for promotion. Those persons in the no. 1 position were promoted prior to and after the Plaintiff. The process

was changed to deprive the Plaintiff of a right to be considered for promotion. In other words, the no. 1 candidate was consistently promoted until the process was changed to remove the Plaintiff from the no. 1 position.

What the Court below failed to understand was that the Chief was retaliating against members of the FOP (Fraternal Order of Police). The Plaintiff in this case had a history with the Chief arising out of a confrontation that took place when the Plaintiff was the President of the FOP. What we have is retaliation which resulted in the Plaintiff not being considered for promotion. This was not a matter to be decided within the Mount Olive Police Department. This was a constitutional violation which should be resolved by a Court applying the principles of a R. 4:6-2 Motion. Printing Mart was violated.

LEGAL ARGUMENT
POINT I
The Court Below Failed to Apply
Prevailing Case Law (Pa-25).

The prevailing case law in connection with a R. 4:6-2 is Printing Mart v. Sharp Electronics, 116 N.J. 739, 746 (1989) which states that the complaint must be searched in depth and with liberality to determine if a cause of action can be gleaned from an obscure statement especially if further discovery is taken. The Court also stated that all inferences favor the non-moving party. Furthermore, the

Supreme Court stated that such motions are granted only in rare instances and ordinarily without prejudice. Specifically, in this case, the Court granted the Motion “with prejudice.”

The Court below did not search for a cause of action as is required by Printing Mart. The Court did not grant the Motion without prejudice. The Court simply stated that the Plaintiff has no right to proceed. This case involves the deprivation of a right. The Plaintiff, at one point, was no. 3; then, he was no. 2 because there were individual separate promotions and consequently, he went from three to two to one. And at the time that he became no. 1, he was removed because of a process that did not reflect the various processes over the years.

The Plaintiff was not denied promotion. He was denied the right to be considered as no. 1 for the promotion. The right which he acquired as he went from 3 to 2 to 1, was extinguished by the Chief instituting a process that clearly demonstrated that it was aimed at removing the Plaintiff from the no. 1 position and, therefore, consideration.

This appeal comes to the Court on a R. 4:6-2(e) Motion to Dismiss and pursuant to case law, the Court accepts the facts alleged in the Complaint as true, granting Plaintiff “every reasonable inference of fact;” Green v. Morgan Props., 215 N.J. 431, 452 (2013), *quoting* Printing Mart - Morristown v. Sharp Elecs.

Corp., 116 N.J. 739, 746 (1989). A summary of the facts pled in Plaintiff's Complaint (Pa-1) and Certification (Pa-20), is set forth in the Statement of Facts.

Pursuant to the Rule, the Court below must accept all facts in the Complaint as true and providing Plaintiff with all reasonable inferences drawn therefrom. The Court below determined that the Plaintiff failed to establish the existence of a legal basis or cause of action for Defendant's alleged 1983 violation. As indicated above, R. 4:6-2(e) provides that a Complaint may be dismissed for "failure to state a claim upon which relief can be granted." In interpreting the Rule, in Printing Mart, *supra*, our Supreme Court explained that "the test for determining the adequacy of a pleading is whether a cause of action is 'suggested by the facts;'" 116 N.J. 746 *quoting Velantzis v. Colgate Palmolive Co.*, 109 N.J. 189, 192 (1988). The Court directed Judges to "search the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim" and grant "opportunity...to amend, if necessary;" Ibid. (*quoting DiCristofaro v. Laurel Grove Men-L Park*, 43 N.J. Super. 244, 252 (App. Div. 1957); see also Pressler v. Verniero, Current N.J. Court Rules; C.M.T. 4.1.1. on R. 4:6-2(c) (2022).

A complaint should not be dismissed under this Rule where a cause of action is suggested by the facts and a theory of actionability may be articulated by amendment of the Complaint.

The Court also emphasized that Motions to Dismiss under R. 4:6-2(c), should be granted in only the rarest of instances and, generally, without prejudice; Printing Mart, supra at 772; see also Smith v. SBC Commc'ns Inc., 178 N.J. 265, 282 (2004). However, dismissal with prejudice is appropriate if the claim is barred by a statute of limitations or similar impediment; Id. at 772.

This Court, pursuant to the case law, reviews “*de novo*” the trial Court’s grant of a Motion to Dismiss under R. 4:6-2(c) and “owes no deference to the trial Court’s legal conclusions;” Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C., 237 N.J. 91, 108 (2019).

What we have here is that the Plaintiff followed the rules and regulations and participated in the promotional process to the point where he was no. 1 on the promotion list. The Chief of Police, by changing the process from one year to five months, automatically removed the Plaintiff from the position he had worked his way through to achieve. The Plaintiff had a right to be considered as the no. 1 on the list. As soon as it became known that there would be a vacancy, the Chief changed the procedure from one year to five months which just happened to coincide with an upcoming retirement. This is not a case to be resolved according to the rules and regulations dealing with failure to promote. This is a change in the procedure which eliminated the Plaintiff. The Plaintiff had achieved a goal i.e. no. 1, and he was removed from that goal, not by the usual procedure, but by a

procedure manufactured so as to eliminate the Plaintiff. Those are constitutional implications.

CONCLUSION

For the reasons expressed herein, it is respectfully submitted that this Court reverse the decision of the Court below and remand the matter back to the Court below for trial.

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Dated: 7/10/24

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August 20, 2024

Via eCourts

Appellate Division
Superior Court of New Jersey
P.O. Box 006
Richard J. Hughes Justice Complex
25 West Market Street
Trenton, NJ 08625

Re: Chad Roddy, Appellant v. Mayor and Council of the Township of Mount Olive, Mount Olive Police Department, Police Chief Stephen Beecher, Respondents, Docket No.: A-1436-23

On Appeal from the December 22, 2023, Orders of the Superior Court of New Jersey, Law Division, Morris County, Docket No.: MRS-L-01497-23

Respondents' Letter Brief in Opposition to Appellant's Appeal

Dear Honorable Judges:

As your file may reflect, I have been assigned to represent the Respondents Mayor and Council of the Township of Mount Olive, Mount Olive Police Department, Police Chief Stephen Beecher (hereinafter, "Mount Olive")

with respect to the above-captioned matter. Please accept this letter brief, in lieu of a more formal brief, in opposition to the Appellant’s Appeal.

TABLE OF CONTENTS OF BRIEF

TABLE OF JUDGMENTS, ORDERS AND RULINGS 2

PROCEDURAL HISTORY 2

STATEMENT OF FACTS 2

LEGAL ARGUMENT 3

**THE DECISION OF THE LAW DIVISION
SHOULD BE AFFIRMED**

CONCLUSION 7

TABLE OF CONTENTS OF RESPONDENTS’ APPENDIX

Mount Olive Ordinance §68-1, et seq. Ra01
(Exhibit A to S. Beecher Cert.)

Mount Olive Police Department Policies and Procedures Ra11
(Exhibit B to S. Beecher Cert.)

Agreement Between the Township of Mount Olive and Mount
Fraternal Order of Police Ra21
(Exhibit D to S. Beecher Cert.)

TABLE OF JUDGMENTS, ORDERS AND RULINGS

Order Denying Plaintiff’s Motion for Injunctive Relief
Dated December 22, 2023 Pa24

Order Granting Defendants’ Motion to Dismiss
Dated December 22, 2023 Pa25

PROCEDURAL HISTORY

On August 29, 2023, the Plaintiff filed a Complaint in the Superior Court of New Jersey, Law Division, Civil Part. (Pa1) On September 21, 2023, Plaintiff filed a motion seeking injunctive relief. (Pa7) On October 5, 2023, Defendants filed a Cross-Motion to Dismiss the Plaintiff's complaint and in Opposition to Plaintiff's Motion for Injunctive Relief. (Pa10) On December 22, 2023, Oral argument was heard by the Honorable Stephan C. Hansbury, J.S.C. Judge Hansbury denied the Plaintiff's Motion for Injunctive Relief and Granted Defendants' Cross Motion to Dismiss the Plaintiff's complaint. (Pa24) Appellant subsequently filed a notice of Appeal on January 24, 2024. (Pa27)

STATEMENT OF FACTS

Appellant is currently employed as a police officer with the Mount Olive Police Department. Township of Mount Olive Ordinances, chapter 68, Article I and Article II, which governs the establishment and operation of the Mount Olive Police Department. Section 68-21 of the Ordinance states the following: "Promotions shall be made in accordance with the terms and conditions of the collective bargaining agreement(s) in effect between the Township and collective bargaining units representing police officers." (Ra08) Section 68-5 of the Ordinance states the following: "The Mayor shall, from time to time, as may be necessary, adopt and amend the rules and regulations for the government

August 20, 2024

Page | 4

and discipline of the Police Department and employees thereof. Said rules and regulations may fix and provide for the enforcement of such rules and regulations and the enforcement of penalties for the violation of such rules and regulations. All employees of the Police Department shall be subject to such rules and regulations and penalties.” (Ra01.)

Pursuant to the Ordinance, Mount Olive has adopted various Rules and Regulations governing the management and operation of the Mount Olive Police Department. (Ra11) Those regulations include provisions related to promotions. (Ra11)

Plaintiff is a member of the Mount Olive Fraternal Order of Police and was formerly its president. An agreement is currently in effect between the Township of Mount Olive and the Mount Olive Fraternal Order of Police, which was executed by the Plaintiff as President of the union (hereinafter referred to as “Agreement”). (Ra21) Article XI of the Agreement sets forth the Grievance Procedure, and states as follows: “The following constitutes the sole and exclusive method for resolving grievances between the parties covered by this Agreement and shall be followed in its entirety unless any step is waived by mutual consent.” (Ra42)

The claims made by the Plaintiff in his complaint are subject to the Grievance Procedure set forth in the Agreement between Mount Olive and the

August 20, 2024

Page | 5

Mount Olive FOP. Beecher Cert. Mount Olive has not waived the requirement that disputes subject to the Agreement are required to proceed through the grievance process. (Pa005) Neither the Plaintiff, nor anyone acting on his behalf, filed any grievances concerning the subject matter of the Plaintiff's complaint. (Pa0015).

LEGAL ARGUMENT

POINT I

THE DECISION OF THE LAW DIVISION SHOULD BE AFFIRMED

a. LEGAL STANDARD APPLICABLE TO MOTION TO DISMISS

A Motion to Dismiss a Complaint for failure to set forth a claim upon which relief can be granted pursuant to New Jersey Court Rule 4:6-2(e) is governed by the principals enunciated by the New Jersey Supreme Court in Printing Mart v. Sharp Electronics, 116 N.J. 739. (1989).

We approach our review of the judgment below mindful of the test for determining the adequacy of a pleading: whether a cause of action is "suggested" by the facts. In reviewing a complaint dismissed under *Rule* 4:6-2(e) our inquiry is limited to examining the legal sufficiency of the facts alleged on the face of the complaint. However, a reviewing court "searches the complaint in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." At this preliminary stage of the litigation the Court is not concerned with the ability of plaintiffs to prove the allegation contained in the complaint. For purposes of analysis plaintiffs are entitled to every

August 20, 2024

Page | 6

reasonable inference of fact. The examination of a complaint's allegations of fact required by the aforesaid principles should be one that is at once painstaking and undertaken with a generous and hospitable approach. [Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). (Citations omitted).]

In addition, a Motion to Dismiss “may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for [the] claim must be apparent from the Complaint itself.” Edwards v. Prudential Prop. & Cas. Co., 357 N.J. Super. 196, 202 (App. Div. 2003). In ruling on a Rule 4:6–2(e) Motion to Dismiss, the Court may consider “allegations in the Complaint, exhibits attached to the Complaint, matters of public record, and documents that form the basis of a claim.” Banco Popular N. Am. v. Gandi, 184 N.J. 161, 183 (2005) (quoting Lum v. Bank of Am., 361 F.3d 217, 222 n. 3 (3d Cir.), cert. denied, 543 U.S. 918 (2004)). On appeal, the standard of review of a motion to dismiss is plenary. W.S. v. Hildreth, 252 N.J. 506, 518 (2023).

It is respectfully submitted that the Plaintiff’s Complaint failed to set forth any viable cause of action against the Defendants therefore was properly dismissed. With respect to the Mount Olive Police Department, since it is not a “Person” or a separate legal entity, it is not a proper defendant. With respect to Defendants Beecher and the Township of Mount Olive, the Plaintiff failed to comply with the requirements of the collective bargaining agreement by not

August 20, 2024

Page | 7

filing a grievance. For those reasons, the Plaintiff's complaint was properly dismissed as to all Defendants by the Court below.

b. THE MOUNT OLIVE POLICE DEPARTMENT IS NOT A "PERSON" SUBJECT TO SUIT, THEREFORE PLAINTIFF'S CLAIMS AGAINST IT WAS PROPERLY DISMISSED

The Mount Olive Police Department is not a "person." Therefore, plaintiff's claims against it were properly dismissed. Numerous courts have considered the question of whether a municipal police department is a proper defendant and have unanimously reached the conclusion that it is not. PBA Local No. 38 v. Woodbridge Police Dept., 832 F. Supp. 808, 825-826 (Dist. N.J. 1993); See also Will v. Michigan Dep't of State Police, 491 U.S. 58, 64 (1989) (holding that the Michigan Department of State Police was not a "person" under 42 U.S.C. 1983); Briggs v. Moore, 251 Fed. Appx. 77 (3rd Cir. 2007) (police department is not a "person" within the meaning of a §1983 suit).

Based upon the above, all claims against the Mount Olive Police Department were properly dismissed as the Mount Olive Police Department is not a person capable of being sued. The Police Department is not a separate legal entity from the Township of Mount Olive. Instead, the Mount Olive Police Department is a "Department" within the Township of Mount Olive. As such, it was not a proper defendant in this matter.

August 20, 2024

Page | 8

b. THE COMPLAINT WAS PROPERLY DISMISSED AS THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE PARTIES REQUIRES THAT DISPUTES SUCH AS THOSE CLAIMED BY THE PLAINTIFF BE RESOLVED THROUGH THE GRIEVANCE PROCESS

The New Jersey Employer-Employee Relations Act (EERA) provides that a “majority representative of public employees in an appropriate unit shall be entitled to act for and to negotiate agreements covering all employees in the unit[.]” N.J.S.A. 34:13A-5.3. It further states that “[w]hen an agreement is reached on the terms and conditions of employment, it shall be embodied in writing and signed by the authorized representatives of the public employer and the majority representative.” Ibid.

The EERA mandates that “collective agreements in the public sector include provisions for grievance procedures through which the employees may appeal ‘the interpretation, application or violation of policies, agreements, and administrative decisions ... affecting them.’” Troy v. Rutgers, 168 N.J. 354, 379 (2001) (alteration in original) (quoting N.J.S.A. 34:13A-5.3). Additionally, the grievance procedures established in the agreement “shall be utilized for any dispute covered by the terms of such agreement[.]” and the EERA explicitly permits binding arbitration. N.J.S.A. 34:13A-5.3. “Nevertheless, the question whether a particular dispute is arbitrable under the terms of the parties' contract is an issue to be decided by the courts.” Troy, 168 N.J. at 379-80. The statute

August 20, 2024

Page | 9

further provides that when “interpreting the meaning and extent of a provision of a collective negotiation agreement providing for grievance arbitration, a court or agency shall be bound by a presumption in favor of arbitration. Doubts as to the scope of an arbitration clause shall be resolved in favor of requiring arbitration.” N.J.S.A. 34:13A-5.3.

The interpretation and construction of a contract is a matter of law. Kaur v. Assured Lending Corp., 405 N.J. Super. 468, 474 (App. Div. 2009). In contractual disputes, “the language of the agreement typically governs,” GMAC Mortgage, LLC v. Willoughby, 230 N.J. 172, 183 (2017), and “courts should enforce contracts as the parties intended,” Pacifico v. Pacifico, 190 N.J. 258, 266 (2008). As such, “it is a basic rule of contractual interpretation that a court must discern and implement the common intention of the parties.” Id. at 266.

The court determines whether the contract is clear or ambiguous. Schor v. FMS Fin. Corp., 357 N.J. Super. 185, 191 (App. Div. 2002). “An ambiguity in a contract exists if the terms of the contract are susceptible to at least two reasonable alternative interpretations[.]” Ibid. (alteration in original) (quoting Nester v. O'Donnell, 301 N.J. Super. 198, 210 (App. Div. 1997)). Additionally, when determining the meaning of the agreement's terms “by the objective manifestations of the parties' intent, the terms of the contract must be given their ‘plain and ordinary meaning.’” Ibid. (quoting Nester, 301 N.J. Super. at 210).

August 20, 2024

Page | 10

Courts should examine the document as a whole and “not torture the language [of a contract] to create ambiguity.” Ibid. (alteration in original) (quoting Nester, 301 N.J. Super. at 210).

When a contract's terms are “clear and unambiguous[,] there is no room for interpretation or construction,” and, therefore, courts “must enforce the terms as written.” Karl's Sales & Serv., Inc. v. Gimbel Bros., 249 N.J. Super. 487, 493 (App. Div. 1991). Courts may not rewrite the contract, remake a better contract for the parties, or alter the contract to benefit one party. Schor, 357 N.J. Super. at 192. “The general rule is that an employee seeking to bring a contract grievance ‘must attempt use of the contract grievance procedure agreed upon by employer and union as the mode of redress.’” Thompson v. Joseph Cory Warehouses, Inc., 215 N.J. Super. 217, 220 (App. Div. 1987) (quoting Republic Steel Corp. v. Maddox, 379 U.S. 650, 652-53 (1965)).

The Agreement between the Defendants and the Union is clear and unambiguous. It requires that complaints regarding items covered by the terms of the Agreement are to be pursued through the grievance process. The method by which promotions are made is set forth in the Agreement. As a result, complaints concerning promotions must be made by utilizing the grievance process.

August 20, 2024

Page | 11

Judge Hansbury concluded as much during his oral decision when he stated that “[c]learly, the grievance procedure is the way this gentleman should have gone. He does not have the right to file an independent lawsuit because the rules under which he is directed require this to go through the grievance process.” [1T14-14 to 18.] Judge Hansbury’s decision was legally correct and was amply supported by the record below.

Therefore, the Plaintiffs’ complaint was properly dismissed and the trial court’s decision should be affirmed.

CONCLUSION

For the reasons more fully set forth above, it is respectfully requested that the trial court’s decision be affirmed in all respects.

Respectfully submitted,

Johnson & Johnson, Esqs.
Attorneys for Respondents

By: /s/William G. Johnson

WGJ/dv

cc: George T. Daggett, Esq. – Via eCourts

Superior Court of New Jersey

CHAD ROSSY,

Plaintiff-Appellant,

v.

MAYOR AND COUNCIL OF THE
TOWNSHIP OF MOUNT OLIVE,
MOUNT OLIVE POLICE
DEPARTMENT, POLICE CHIEF
STEPHEN BEECHER AND JOHN
DOES 1-5,

Defendants-Respondents.

* APPELLATE DIVISION
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* SAT BELOW:
* Hon. Stephan C. Hansbury, JSC

**PLAINTIFF-APPELLANT'S
REPLY BRIEF**

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TABLE OF CONTENTS
Reply Brief

	<u>Page</u>
PROCEDURAL HISTORY	1
STATEMENT OF FACTS	1
RESPONSE TO RESPONDENTS' BRIEF	1
CONCLUSION	2

TABLE OF JUDGMENTS, ORDERS & RULINGS

Order denying Plaintiff's Motion to Stay Promotion filed 12/22/23	Pa-24
Order granting Defendant's Motion to Dismiss filed 12/22/23	Pa-25

PROCEDURAL HISTORY

Plaintiff relies upon the Procedural History set forth in his previously filed Appeal Brief.

STATEMENT OF FACTS

Plaintiff relies upon the Procedural History set forth in his previously filed Appeal Brief.

RESPONSE TO RESPONDENT'S BRIEF

Once again, the Defendants have failed to recognize that there is a constitutional distinction between failure to promote and failure to consider a person to be promoted. In the instant case, the Chief's actions were directed to depriving the Appellant of his right to be considered. The Chief changed the dates to preclude the Plaintiff from being number one on the list.

Failure to promote is subject to mediation. Failure to consider a person for promotion is a 1983 violation.

CONCLUSION

For the reasons expressed herein, it is respectfully submitted that this Court reverse the decision of the Court below and remand the matter back to the Court below for trial.

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Dated: 9/6/24