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Florham Village, LLC,

Plaintiff/Appellant,

vs.

Pure Lifestyle, LLC d/b/a Pure Barre,
Elizabeth Billmeier and Kyle Krause,

Defendants/Respondents.

SUPERIOR COURT OF NEW
JERSEY
APPELLATE DIVISION

DOCKET NO. A-003248-23

CIVIL ACTION

ON APPEAL FROM THE
SUPERIOR COURT OF NEW
JERSEY, LAW DIVISION, MORRIS
COUNTY

DOCKET NO. MRS-L-794-21

SAT BELOW:

Hon. Stephan C. Hansbury, J.S.C.

BRIEF OF PLAINTIFF/APPELLANT IN SUPPORT OF THE APPEAL

On the Brief

Joshua Beinhaker, Esq. (005322005)

TABLE OF CONTENTS-BRIEF

	<u>Pages</u>
TABLE OF CONTENTS BRIEF	i
TABLE OF JUDGMENTS, ORDERS AND RULINGS	ii
TABLE OF TRANSCRIPT DESIGNATIONS	ii
TABLE OF CONTENTS- APPENDIX	iii
TABLE OF AUTHORITIES	v
PRELIMINARY STATEMENT	1
PROCEDURAL HISTORY	2
STATEMENT OF FACTS	3
LEGAL ARGUMENT	5
POINT I: THE TRIAL COURT ERRED IN ORDERING A BAR ON ANY FUTURE CLAIMS BETWEEN THE PARTIES PERTAINING TO THE LANDLORD/TENANT RELATIONSHIP (P1a; 1T9:3-19:11)	
A. Standard of Review	5
B. Discussion	5
CONCLUSION	8

TABLE OF JUDGMENTS, ORDERS AND RULINGS

	<u>Pages</u>
Order granting declaratory relief dated May 10, 2024	1a
Reasons on the record for granting declaratory relief	1T

TABLE OF TRANSCRIPT DESIGNATIONS

- 1T- Transcript of Hearing dated May 10, 2024
- 2T- Transcript of Hearing dated February 9, 2024

TABLE OF CONTENTS-APPENDIX

	<u>Pages</u>
Order granting declaratory relief filed May 10, 2024	1a
Amended Complaint filed April 14, 2021	2a
Answer and Counterclaim filed August 11, 2021	5a
Plaintiff's Answer to Counterclaim	11a
Order for judgment dated October 14, 2022	14a
Order for judgment dated November 1, 2022	16a
Appellate Division Opinion decided November 16, 2023	17a
Plaintiff's Notice of Motion for Summary Judgment filed February 29, 2024	29a
Plaintiff's Statement of Material Facts filed February 29, 2024	31a
Certification of Carol Grapes in support of Plaintiff's Motion for Summary Judgment filed February 29, 2024	33a
Exhibit A to Certification, applicable Lease dated August 27, 2015, filed February 29, 2024	35a
Defendants' Cross-motion for declaratory relief filed March 26, 2024	76a
Defendants' Counterstatement of facts filed March 26, 2024	77a
Certification in opposition to Defendants' motion for declaratory relief filed April 23, 2024	78a
Exhibit A to Certification, applicable Lease dated August 27, 2015, filed April 23, 2024(Omitted here See 35a)	
Temporary Occupancy Agreement between Plaintiff and Franchisor	81a
	iii

<u>Gonzalez v. Stabley Morland Little Friends Etc.</u> Docket No. A-5004-11T3 (App. Div. 2013)	84a
Notice of Appeal	88a
Statement of Defendants' Motion Record	92a

TABLE OF AUTHORITIES

Pages

CASE LAW

Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162 (App. Div.)
certif. denied, 154 N.J. 608 (1998) 3

Templo Fuente De Vida Corp. V. Nat’l Union Fire Ins. Co.,
224 N.J. 189 (2016) 3

D’Agostino v. Maldonado, 216 N.J. 168 (2013) 3

Manalapan Realty, L.P. v. Twp. Comm. of Manalapan,
140 N.J. 366 (1995) 4

Murphy v. New Milford Zoning Comm’n, 402 F.3d 342, 347 (2d Cir. 2005).

Abbott Labs. v. Gardner, 387 U.S. 136, 148, 87 S. Ct. 1507, 1515,
18 L. Ed. 2d 681, 691 (1967)

Califano v. Sanders, 430 U.S. 99, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977)

K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep’t of Env’tl. Prot.,
379 N.J. Super. 1, 9-10 (App. Div.) certif. denied, 185 N.J. 390 (2005).

Gonzalez v. Stabley Morland Little Friends Etc. Docket No. A-5004-11T3
(App. Div. 2013).

COURT RULES

R. 4:42-7

PRELIMINARY STATEMENT

In this matter, plaintiff, a landlord, brought suit against defendants, a tenant and personal guarantors of the relevant commercial lease, all stemming from non-payment of rent and other additional rent obligations under the lease. Plaintiff was awarded summary judgment as to rent, additional rent, legal fees and costs owed. Plaintiff, however, appealed the amount of late fees and insurance charges awarded. The Appellate Division denied the appeal as to the late fees but remanded the matter to the Trial Court for a determination of insurance charges owed to Plaintiff. The parties agreed as to the insurance amount owed (\$1,096.00) but could not agree as to the language in the release. Defendant forwarded Plaintiff a check in the amount of \$1,096.00 which was held in escrow as the parties tried to resolve the release language to no avail. Defendants sought to include language in the release to bar any and all claims between the parties, including potential future claims. Plaintiff did not agree to this language. Defendant filed a motion to enforce the settlement which was denied. Plaintiff filed a motion for summary judgment as to the \$1,096.00. Defendant filed a cross-motion for declaratory relief(which was not even plead) seeking an Order preventing Plaintiff from filing any hypothetical future claims relating to the landlord tenant relationship. The Trial Court denied the motion for summary judgment as to the \$1096.00 saying it was moot and that Plaintiff should just deposit the check. The

Trial Court granted Defendants' motion seeking a bar on all future claims. Plaintiff appeals this Order as the declaratory relief sought was not plead, future claims for rent are not barred under the entire controversy doctrine and the issue before the Court was not ripe for adjudication.

PROCEDURAL HISTORY

Plaintiff commenced this action by filing a Complaint on April 12, 2021. On April 14, 2021, Plaintiff filed an Amended Complaint removing two of the defendants from this matter. (P2a). Defendants filed its Answer and Counterclaim on August 11, 2021. (P5a) The Counterclaim alleged that Plaintiff breached a document that did not exist, breached their obligation of good faith and fair dealing and alleged that Plaintiff should have filed for COVID relief funds. There was no claim for declaratory relief.

On April 28, 2022, plaintiff moved for summary judgment. The court held oral argument on October 14, 2022. On the same day, the trial court entered an Order granting summary judgment to plaintiff, citing the reasons set forth on the record. (P14a) The court dismissed the counterclaim with prejudice. (P14a) Plaintiff appealed the court's Order granting summary judgment contending the court did not properly calculate the amount owed to Plaintiff. The Appeal was denied in part and granted in part. The matter was remanded to the Trial Court. (P17a). On February 29, 2024, Plaintiff filed a motion for summary judgment as to the insurance charges owed.

(P29a) On March 26, 2024, Defendant filed a cross-motion for declaratory relief seeking to bar Plaintiff from filing any future claims against Defendant based upon the landlord/tenant relationship. (P76a) Plaintiff opposed this motion. (P78a) Plaintiff's motion for summary judgment was denied as "moot." On May 10, 2024, the court granted Defendant's motion barring any future claims. (P1a). Plaintiff filed a notice of appeal on June 22, 2024. (P88a)

STATEMENT OF FACTS

The Plaintiff is the owner of premises located at 187 Columbia Turnpike, Florham Park, New Jersey, a shopping center commonly known as Florham Village. ("Premises") (P2a) On or about August 27, 2015, Plaintiff, entered into written lease agreement with the PB Florham Park LLC, later assigned to Defendants, to lease them the Premises. ("Lease"). (P35a). In addition to base rent, the tenant was responsible for CAM, charges, taxes, insurance, late fees, legal fees and costs. (P35a) There was also a personal guaranty.

Defendants defaulted in the payment of rents, insurance, real estate taxes, late fees and counsel fees with regard to the subject lease. The court entered summary judgment in favor of Plaintiff in the amount of \$74,519.37 plus legal fees and costs. (P14a and P16a), Certain issues were appealed, and the matter was remanded to

resolve Defendants' liability as to an insurance payment. The parties agreed as to the amount owed but could not agree as to the language of the release. Defendants sent a check for the amount owed to Plaintiff which was held in escrow. Ultimately, the court advised Plaintiff to cash the check and entered an Order that Plaintiff could not file any further claims as to Defendants pertaining to the landlord/tenant relationship. This includes any claims that arose after this matter was adjudicated.

The corporate defendant was a franchisee and after it vacated the property, in an attempt to mitigate their damages, Plaintiff/landlord entered into a temporary occupancy agreement with the franchisor wherein the franchisor would pay rent for a certain time period while the parties searched for a new tenant. (P81a) The term of the agreement expired and Plaintiff suffered new damages as the subject leasehold remained vacant and Defendants again did not pay rent. The extent of Plaintiff's new damages was unknown until recently when the property was finally leased to a new tenant. Under the Court's Order of May 10, 2024 (P1a), Plaintiff is improperly barred from bringing a new claim for the new damages in direct contradiction to applicable law. Plaintiff appeals to vacate this Order.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN ORDERING A BAR ON ANY FUTURE CLAIMS BETWEEN THE PARTIES PERTAINING TO THE LANDLORD/TENANT RELATIONSHIP(P1a; 1T9:3-19:11)

A. Standard of Review

In reviewing an order granting summary judgment, an appellate court uses the same standard as the trial court. Prudential Prop. & Cas. Ins. Co. v. Boylan, 307 N.J. Super. 162, 167 (App. Div.), certif. denied, 154 N.J. 608 (1998); see Templo Fuente De Vida Corp. V. Nat'l Union Fire Ins. Co., 224 N.J. 189, 199 (2016) ("we review the trial court's grant of summary judgment de novo under the same standard as the trial court," and we accord "no special deference to the legal determinations of the trial court"). To the extent that the trial court's decision constitutes a legal determination, it is reviewed de novo. D'Agostino v. Maldonado, 216 N.J. 168, 183 (2013); Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995) ("A trial court's interpretation of the law and the legal consequences that flow from established facts are not entitled to any special deference.").

B. Discussion

The ripeness doctrine is rooted in prudential limitations on the exercise of

judicial authority. Murphy v. New Milford Zoning Comm'n, 402 F.3d 342, 347 (2d Cir. 2005). The general inquiry is whether the court would benefit from deferring initial review until the claims presented for resolution have arisen in "a more concrete and final form." Ibid. The doctrine's "basic rationale is to prevent the courts, through avoidance of premature adjudication, from entangling themselves in abstract disagreements." Ibid. (quoting Abbott Labs. v. Gardner, 387 U.S. 136, 148, 87 S. Ct. 1507, 1515, 18 L. Ed. 2d 681, 691 (1967), overruled on other grounds, Califano v. Sanders, 430 U.S. 99, 97 S. Ct. 980, 51 L. Ed. 2d 192 (1977)). New Jersey courts examine two factors in determining the ripeness of a controversy: "(1) the fitness of issues for judicial review and (2) the hardship to the parties if judicial review is withheld at this time." K. Hovnanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Env'tl. Prot., 379 N.J. Super. 1, 9-10 (App. Div.) certif. denied, 185 N.J. 390 (2005). Regarding the first prong, the court should consider whether judicial review would require further factual development. Id. at 10. In addressing the second prong, there must be a "real and immediate threat of enforcement" against the party seeking review where constitutional imperatives are involved. Ibid.

In the matter at hand, there is no question that the issues ruled upon by the Trial Court were not ripe for judicial determination and the Trial Court has entangled itself in abstract disagreements. There was no fitness for judicial review as the exact claims

were not presented or even entirely known at the time. Plaintiff only knew that it may bring future claims against the Defendants once the full scope of damages from the subsequent breach was known after the property was rented. Not only did the Defendants not even plead for any type of declaratory relief, but more importantly, the Court barred unknown, hypothetical potential future claims. Of course, these claims are not yet ripe for judicial review. The claims did not even exist yet when Plaintiff obtained judgment in October of 2022. The entire controversy doctrine may apply for anything that occurred prior to the October 2022 judgment and Plaintiff has acknowledged this on the record but the Court cannot just place a blanket bar on future claims even if entire controversy doctrine may apply (which we believe it would not apply depending on the claim). Plaintiff would have to file the claim and Defendants can raise any defense it sees fit once the claims are ripe. The Court cannot prematurely decide these matters without even knowing the basis for such claims.

Subsequent claims for rent are not barred by the entire controversy doctrine. Sequential actions for money judgments as the rent becomes due after the tenant has been evicted/vacated are allowed under the law. Gonzalez v. Stabley Morland Little Friends Etc. Docket No. A-5004-11T3 (App. Div. 2013). The court held that the entire controversy doctrine does not apply in this instance. The tenant shall remain liable and shall pay monthly payments to the landlord subsequent to the re-entry by

the landlord during the remainder of the lease term. Damages will be determined as per R. 4:42-7. While Plaintiff is not seeking any damages at this time and any remand would simply vacate the Trial Court's Order with no further trial or action, Plaintiff should not have a blanket ban from filing a future breach of contract claim. Plaintiff should have the right to bring a future claim if so desired as the relevant lease term is through 2025 and each month of non-payment of rent is considered a subsequent breach.

CONCLUSION

The Trial Court cannot issue a blanket ban on future hypothetical claims by the Plaintiff; especially when an action for declaratory relief was not even included in Defendants' pleadings. These potential issues were not ripe for adjudication and subsequent claims for rent after judgment was issued in 2022 are not barred by the entire controversy doctrine. The Trial Court's Order of May 10, 2024 should be vacated.

Respectfully submitted,

Beinhaker & Beinhaker LLC

By: Joshua Beinhaker, Esq.
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Dated: September 26, 2024

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FLORHAM VILAGE, LLC

PLAINTIFF/APPELLANT,

v.

PURE LIFESTYLE, LLC D/B/A
PURE BARRE, ELIZABETH
BILLMEIER AND KYLE KRAUSE

DEFENDANTS/RESPONDENTS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003248-23

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY

DOCKET NO: MRS-L-794-21

SAT BELOW:
HON. STEPHAN C. HANSBURY, J.S.C.

LETTER BRIEF ON BEHALF OF RESPONDENTS/CROSS APPELLANTS

John Motta, Esq.
On the Brief

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter brief in support of Respondents' opposition to this Appeal and in support of Respondents' Cross-Appeal for Sanctions and Attorney's Fees.

TABLE OF CONTENTS

PROCEDURAL HISTORY	1-5
COUNTERSTATEMENT OF FACTS	1-5
LEGAL ARGUMENT	6-13
POINT I - The Trial Court Properly Granted Declaratory Relief Barring Plaintiff/Appellant From Bringing New Claims	6
POINT II - The Trial Court Erred in Denying an Award of Counsel Fees Defendant/Respondents'	11
CONCLUSION	13

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

TABLE OF AUTHORITIES

<u>Case/Other Authority</u>	<u>Page No.</u>
<u>N.J.S.A 2A:16-51. et seq. Declaratory Judgment</u>	RA-71
<u>R. 4:30A. (Entire Controversy Doctrine)</u>	RA-72
<u>Falcone v. Middlesex County Med. Soc.</u> , 47 N.J. 92 (1966).....	RA-73
<u>Thornton v. Potamkin Chevrolet</u> , 94 N.J. 1 (1983).....	RA-73
<u>Garvey v. Township of Wall</u> , 303 N.J. Super. 93 (App Div 1997).....	RA-73
<u>Lubliner v. Bd. of Alcoholic Bev. Control</u> , 33 N.J. 428, 435 (1960)..	RA-74
<u>Velasquez v. Franz</u> , 123 N.J. 498, 505 (1991).....	RA-74
<u>Kram v. Kram</u> , 94 N.J. Super. 539, 551 (Ch. Div.), rev'd on other grounds, 98 N.J. Super. 274 (App. Div. 1967), aff'd, 52 N.J. 545 (1968).....	RA-74
<u>Watkins v. Resorts Int'l Hotel & Casino, Inc.</u> , 124 N.J. 398 (1991)...	RA-74
<u>Brookshire Equities, L.L.C. v. Montaquiza</u> , 346 N.J. Super. 310. 318 (App. Div.), certif. denied, 172 N.J. 179 (2002).....	RA-74
<u>Culver v. Ins. Co. of N. Am.</u> , 115 N.J. 451, 461-62 (1989).....	RA-74

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

LIST OF PARTIES

Party Name	Appellate Designation	Trial Court/ Party Role
FLORHAM VILLAGE, LLC	Appellant	Plaintiff
PURE LIFESTYLE, LLC	Respondent	Defendant
ELIZABETH BILLMEIER	Respondent	Defendant
KYLE KRAUSE	Respondent	Defendant

Appellate Division Docket No:A-0033248-23 Respondents' Letter Brief
Page 1

PROCEDURAL HISTORY AND COUNTER STATEMENT OF FACTS 1

This matter arises from a non-payment of rent case under a written commercial lease agreement. The default occurred because Respondent's business (a gym) was closed pursuant to Governor Murphy's Executive Order issued in connection with the COVID-19 pandemic. Respondent was evicted and Appellant obtained a money judgment for the amounts due in rent, late fees and counsel fees.

The judgment against Respondents was paid in full and a Warrant of Satisfaction filed with the Court on April 18, 2023 (See RA-58). However, Appellant filed an appeal of the Trial Court's findings with respect to the late fee provisions of the lease. That appeal was decided on November 16, 2023 (See RA-1). The Appellate Division upheld the Trial Court's conclusion regarding the amounts due under the lease for base rent and further held the late fee provision as interpreted by Appellant was unconscionable. The Appellate Division remanded the matter back to the Trial Court for a determination regarding one remaining issue, which was the amount to be paid by Respondent for common area insurance costs.

1 The procedural history was combined with the counter statement of facts since it is very limited. Only two (2) motions were filed since the Appellate Division's decision of November 16, 2023.

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 2

Shortly after the Appellate Division's decision, the Trial Court set the matter down for a case management conference for December 4, 2023. In the interim, the parties reached a settlement whereby Respondent would pay the sum of \$1,096.00 in full and final satisfaction of all claims. Respondent paid the settlement proceeds and Appellant was provided a standard form Release that Appellant's counsel approved. (See RA-19) On November 29, 2023, Appellant advised the Court by letter that "the parties have amicably resolved all outstanding issues. There is no further need for the December 4, 2023 conference. The appropriate papers will be filed with the court in due courts [sic]". (emphasis supplied). (See RA-27). On December 1, 2023, Appellant filed a Stipulation of Dismissal with Prejudice. (emphasis supplied) (See RA-42).

Appellant ultimately refused to comply with the settlement agreement and would not sign the Release. Respondent filed a motion to enforce the settlement on January 17, 2024 which was heard on February 9, 2024. (See 2T). During oral argument, Appellant's counsel admitted the matter had been settled, that the Release was approved and that he filed a Stipulation of Dismissal with Prejudice. (See 2T, page 4, lines 15-22). Further, Appellant's counsel admitted that Appellant refused to sign the Release because he believes there may be a "new

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 3

issue” since the franchisor, who Appellant never named as a party, made rent payments in accordance with an agreement reached between Appellant and the franchisor and then stopped. Once again, Respondents were out of the picture at this point for a very long time. Respondents had satisfied the judgment against them, a Warrant of Satisfaction was filed by Appellant, a settlement had been reached to conclude all remaining claims and a Stipulation of Dismissal with Prejudice had been filed.

A lengthy exchange between the Trial Court and Appellant’s counsel took place. The Court became understandably frustrated, particularly since Appellant’s counsel’s acknowledged that (1) the matter had been concluded by way of settlement and a Stipulation of Dismissal with Prejudice was filed accordingly, (2) there was no point of having a trial/hearing since the matter was settled, and (3) counsel admitted that if further proceedings were brought, it would be considered frivolous under the circumstances. (See 2T, page 7, lines 4-9). Despite the Trial Court’s frustration and statements made on the record that “This case is over. There is no question about that. This case is over.”, (See 2T, page 15, lines 17-18), the matter was nevertheless set down for trial on March 25, 2024.

On February 21, 2024, Appellant’s counsel sent a letter to the Court requesting

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 4

an adjournment of the trial to permit a Motion for Summary Judgment to be filed. The adjournment request was made without the consent of Respondent's counsel who objected to the request. At this point, it was imperative for the Appellant to be brought before the Court and state its reasons for refusing to comply with the settlement agreement or otherwise explain his assertion that "new claims" could be brought against Respondent. (See RA-43 through RA-46).

Appellant filed its Motion for Summary Judgment seeking the payment of the \$1,096.00 settlement which had already been paid. Respondent filed a Cross-Motion for Declaratory Relief barring the filing of any future claims pursuant to the Entire Controversy Doctrine and *Res Judicata* along with a request for counsel fees and costs. (See RA-47 through RA-78). Oral argument was heard on May 10, 2024 (See 1T). The Court then entered three (3) Orders, including the Order for Declaratory Relief from which this appeal arises. (See RA-79 through RA-81).

In examining Appellant's Brief and Exhibits, it is obvious many key documents and pleadings were not included in Appellant's submission. Further, having the benefit of all the documents and pleadings submitted to the Court below, it is also clear Appellant's brief contains gross misrepresentations and distortions of fact regarding what transpired since the Appellate Court's decision of November 16,

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief

Page 5

2023 and in connection with the Trial Court's decision to grant declaratory relief. It is for this reason that Respondent opposes Appellant's effort to overturn the Trial Court's determination regarding declaratory relief and requests that this matter be remanded for a reconsideration of the award of counsel fees and possibly sanctions against Appellant for this blatant abuse of the judicial process.

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 6

LEGAL ARGUMENT

POINT I

**THE TRIAL COURT PROPERLY GRANTED DECLARATORY RELIEF
BARRING PLAINTIFF/APPELLANT FROM BRINGING NEW CLAIMS**

Respondent will first address Appellant's contention regarding the authority of the Court to enter a judgment for Declaratory Relief. Although it was fully briefed below and incorporated herein by reference (See Memorandum of Law at RA-68 through RA-78), Appellant's argument is completely misplaced and must be addressed.

Appellant argues that declaratory relief was not initially pled by Respondent and therefore Respondent should not have been permitted to request same from the Court. However, declaratory relief is not a cause of action itself nor is it an affirmative defense. It is a power granted to the Court by statute to be exercised when the circumstances warrant the entry of a judgment that would "terminate the controversy or remove an uncertainty". That is exactly why Respondents filed their cross-motion. In light of the comments on the record by Appellant's counsel that "new claims" may be brought, Respondents were compelled to request the Court enter a judgment declaring Appellant had no further right to pursue them further

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 7

for any reason whatsoever. In light of all they have been through in this litigation, Respondents did not view the comments made by Appellant's counsel as idle threats. Respondents reached a settlement with Appellant without any further discovery because Appellant represented to them that the payment of the \$1,096.00 would resolve the matter forever. Now Respondents were faced with the prospect that after paying a judgment, defending a claim for an unconscionable lease term, including an appeal, and reaching a final resolution, the statements by Appellant's counsel regarding "new claims" was unimaginable and had to be addressed. The Court most certainly had the authority to address Respondent's concerns and it did so by entering a judgment barring Appellant from asserting any future claims.

With respect to the Entire Controversy Doctrine and *res judicata*, it must first be acknowledged that these two principles are some of the most fundamental in civil procedure. Once again, both doctrines were fully briefed by Respondent below which Memorandum of Law is incorporated herein by reference (see RA-68 through RA-78).

Appellant argues it is not subject to these established principles and cites an unpublished opinion in support of that position. Aside from the opinion being

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 8

unpublished, there is no factual similarity whatsoever to our case. In our case, the parties were both represented by counsel and unquestionably reached a settlement of all matters which is evidenced by the communications between the parties and in particular Appellant's communication with the Court (See RA-27), the filings with the Court (i.e. Stipulation of Dismissal with Prejudice) and the statements of Appellant's counsel on the record during both motion hearings.

Appellant readily admitted that (1) the only relationship between the parties was the commercial lease, (2) that Appellant received payment in full of the money judgment and filed a Warrant of Satisfaction accordingly, (3) that the subsequent settlement proceeds of \$1,096.00 was paid, and (4) that a Stipulation of Dismissal with Prejudice was filed with the Court. Further, Appellant's counsel confirmed he understood the Entire Controversy Doctrine but refused to answer the Court's direct question as to his client's theory of reinstating a new lawsuit (See 1T, Page 19, lines 3-11). Counsel further admitted the entire controversy doctrine applies to matters which are concluded by way of trial, summary judgment or settlement (See 1T, Page 20, lines 5-25). During that exchange, he made a revealing statement regarding his representation of the Appellant. Essentially, he stated that if his client

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 9

wished to pursue new claims, he would not be the one representing Appellant. (See 1T, Page 20, lines 9-10).

If the only relationship between these parties is the commercial lease and the matter has been fully adjudicated (i.e. a money judgment entered by the Court) and all remaining claims were resolved which was memorialized in writing by the Appellant through communications with counsel and the Court along with the filing of a Stipulation of Dismissal with Prejudice, then no “new claims” can be brought. Any new claims would necessarily involve the same parties, the same set of facts and circumstances and the same underlying claim (i.e. breach of contract).

The Appellate Division must uphold the Trial Court’s conclusion that the Entire Controversy Doctrine and *res judicata* bars Appellant from bringing any “new claims”. Once again, the parties would be identical, the acts complained of and the demand for relief would be the same in both actions (non-payment of rent) and the theory of recovery would also be the same (breach of contract). All the same parties, witnesses, discovery and other proofs would also be the same. Appellant had the benefit of counsel and the same arguments would be made. Whatever agreement was reached between Appellant and the Franchisor to continue making rent payment has no bearing on the settlement reached with Respondent. In short, there is nothing

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 10

further for the parties to litigate, including claims not previously raised.

What must also be considered are the parties relative circumstances which we detailed in many prior submissions. Appellant is a large commercial property owner whose conduct demonstrates a clear intent to inflict as much financial pain on Appellants as possible, despite having been paid in full for the judgment. This ongoing harassment and frivolity comes at a tremendous cost to Respondents who are small business owners forced out of the commercial space due to circumstances beyond their control. Appellant had its day in court and all issues involving the breach of the lease were argued and resulted in a substantial money judgment which was paid in full. By not barring Appellant from asserting further claims and assessing legal fees and costs, Appellant will only be further emboldened to continue the frivolity, but would be completely contrary to the long-standing principles and purpose of the Entire Controversy Doctrine an *res judicata*.

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 11

POINT II

THE TRIAL COURT ERRED IN DENYING AN AWARD OF
COUNSEL FEES TO THE RESPONDENT

Respondents ask the Court to consider the complete context of what transpired since its decision back on November 16, 2023. Respondents incurred extensive legal fees defending a clearly unconscionable lease provision. In fact, the Appellate Division held that “If we were to accept plaintiff’s interpretation [of the late fee provision], defendant’s would be obligated to pay \$82,628.94 in late fees with respect to \$86,966.00 in unpaid rent, a nearly one-hundred percent charge. Nothing is section 3(b) supports such a draconian result.” The only issue following the appeal was a determination of the amount Respondent owed in common area insurance since that had not been addressed below.

Appellant made the offer of \$1,096.00 to settle all matters and Appellant’s accepted without even asking for an accounting because it was in their best interests to end the matter once and for all. Appellant’s counsel notified the Court that all outstanding matters between the parties were resolved and he filed a Stipulation of Dismissal with Prejudice as he should have done.

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 12

Since the settlement was reached, Respondents have endured another year of motions and this appeal along with the legal fees necessitated with such proceedings. Despite the obvious frivolity of Appellant's claims and the threats to impose sanctions, legal fees and costs for engaging is such an abuse of the legal process, Appellant still has not been held to account. Respondent is a small business fighting a large and wealthy adversary with substantial resources. The only way for this matter to truly reach a just ending is to uphold the declaratory judgment of the Trial Court and require Appellant to pay Respondent's counsel fees for the Motion to Enforce Settlement, the Cross Motion for Declaratory Relief and this Appeal. There is certainly substantial evidence on the record at this point which demonstrates Appellants intentional abuse of the system to exact further financial pain on Respondents. The Court must now take decisive action not only in the interests of fairness and justice, but to make certain no further abuse takes place in this matter.

Appellate Division Docket No:A-000924-22 Respondents' Letter Brief
Page 13

CONCLUSION

For the foregoing reasons, Respondent asks that the Trial Court's determination granting declaratory relief be upheld and the matter remanded for a determination of counsel fees and costs against Appellant.

October 28, 2024

/s/ John Motta

JOHN MOTTA
ATTORNEY FOR RESPONDENT

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FLORHAM VILAGE, LLC

PLAINTIFF/APPELLANT,

v.

PURE LIFESTYLE, LLC D/B/A
PURE BARRE, ELIZABETH
BILLMEIER AND KYLE KRAUSE

DEFENDANTS/RESPONDENTS.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-003248-23

CIVIL ACTION

ON APPEAL FROM:

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MORRIS COUNTY

DOCKET NO: MRS-L-794-21

SAT BELOW:
HON. STEPHAN C. HANSBURY, J.S.C.

LETTER BRIEF ON BEHALF OF RESPONDENTS/CROSS APPELLANTS
IN REPLY TO PLAINTIFF-APPELLANT'S OPPOSITION TO
RESPONDENT'S CROSS MOTION

John Motta, Esq.
On the Brief

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

Dear Judges:

Pursuant to R. 2:6-2(b), please accept this letter brief in support of Respondents' opposition to this Appeal and in support of Respondents' Cross-Appeal for Sanctions and Attorney's Fees.

TABLE OF CONTENTS

PROCEDURAL HISTORY	1-5
COUNTERSTATEMENT OF FACTS	1-5
LEGAL ARGUMENT	6-13
POINT I - The Trial Court Properly Granted Declaratory Relief Barring Plaintiff/Appellant From Bringing New Claims	6
POINT II - The Trial Court Erred in Denying an Award of Counsel Fees Defendant/Respondents'	11
CONCLUSION	13

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

TABLE OF AUTHORITIES

<u>Case/Other Authority</u>	<u>Page No.</u>
<u>N.J.S.A 2A:16-51. et seq. Declaratory Judgment</u>	RA-71
<u>R. 4:30A. (Entire Controversy Doctrine)</u>	RA-72
<u>Falcone v. Middlesex County Med. Soc.</u> , 47 N.J. 92 (1966).....	RA-73
<u>Thornton v. Potamkin Chevrolet</u> , 94 N.J. 1 (1983).....	RA-73
<u>Garvey v. Township of Wall</u> , 303 N.J. Super. 93 (App Div 1997).....	RA-73
<u>Lubliner v. Bd. of Alcoholic Bev. Control</u> , 33 N.J. 428, 435 (1960)..	RA-74
<u>Velasquez v. Franz</u> , 123 N.J. 498, 505 (1991).....	RA-74
<u>Kram v. Kram</u> , 94 N.J. Super. 539, 551 (Ch. Div.), rev=d on other grounds, 98 N.J. Super. 274 (App. Div. 1967), aff=d, 52 N.J. 545 (1968).....	RA-74
<u>Watkins v. Resorts Int'l Hotel & Casino, Inc.</u> , 124 N.J. 398 (1991)...	RA-74
<u>Brookshire Equities, L.L.C. v. Montaquiza</u> , 346 N.J. Super. 310. 318 (App. Div.), certif. denied, 172 N.J. 179 (2002).....	RA-74
<u>Culver v. Ins. Co. of N. Am.</u> , 115 N.J. 451, 461-62 (1989).....	RA-74

Appellate Division Docket No:A-003248-23 Respondents' Letter Brief

LIST OF PARTIES

Party Name	Appellate Designation	Trial Court/ Party Role
FLORHAM VILLAGE, LLC	Appellant	Plaintiff
PURE LIFESTYLE, LLC	Respondent	Defendant
ELIZABETH BILLMEIER	Respondent	Defendant
KYLE KRAUSE	Respondent	Defendant

Appellate Division Docket No:A-0033248-23 Respondents' Letter Brief
Page 1

The misstatements of fact and falsehoods by Appellant's counsel in response to our Cross-Appeal are extensive.

Appellant's counsel states the matter was "preliminarily settled" which is false. Once this matter was remanded back to the Trial Court to determine the amount of common area insurance due from the Defendant/Respondent, the parties promptly settled that final issue for the amount of \$1,096.00. Not only was the sum accepted by all parties, but Appellant's counsel approved the Release, notified the Court in writing the matter was resolved and then filed a Stipulation of Dismissal with Prejudice. The fact that Appellant reneged on his agreement to sign the Release is irrelevant and in no way changes the fact this case was concluded or that *res judicata* and/or the Entire Controversy Doctrine apply.

Further, Appellant's argument regarding future claims not being ripe again ignores the doctrines of *res judicata* the Entire Controversy Doctrine since the only relationship between these parties was that of landlord and tenant. The Trial Court extensively questioned Appellant's counsel in this regard and it was admitted there is no other relationship or viable cause of action that could arise between these

parties.

Appellate Division Docket No:A-0033248-23 Respondents' Letter Brief
Page 2

Finally, Appellant never acknowledges the purpose and intent of N.J.S.A 2A:16-51. et seq. (Declaratory Judgment) which is to prevent the exact arguments now being made by Appellant. That is, that the Court has the authority to bar the filing of future actions by Appellant and stop the filing of claims which have no merit and the abuse of the judicial process, which is what is occurring in this matter.

CONCLUSION

For the foregoing reasons, Respondent asks that the Trial Court's determination granting declaratory relief be upheld and the matter remanded for a determination of counsel fees and costs to be assessed against Appellant.

December 16, 2024

/s/ John Motta

JOHN MOTTA
ATTORNEY FOR RESPONDENT