



Steven G. Mlenak, Partner/Co-Chair
 Redevelopment & Land Use Department
 75 Livingston Avenue, Suite 301
 Roseland, NJ 07068
 P: (732) 476-2526
 F: (732) 476-2527
 smlenak@greenbaumlaw.com

April 24, 2025

VIA ELECTRONIC FILING

Hon. Sean D. Gertner, J.S.C.
 Superior Court of New Jersey, Ocean County
 118 Washington Street
 Toms River, New Jersey 08754

RE: *Meridia Toms River 40 Urban Renewal LLC v. Twp. of Toms River, et al.*
Docket No. OCN-L-2065-24 (CBLP)

Dear Judge Gertner:

This firm is counsel to Plaintiff Meridia Toms River 40 Urban Renewal LLC (“Plaintiff”). Please accept this correspondence as Plaintiff’s motion notice letter pursuant to Rule 4:105-4(c). For the reasons that follow, Plaintiff respectfully requests that the Court schedule a telephone conference pursuant to Rule 4:105-4(e) to address the pending discovery issue outlined below.

RELEVANT BACKGROUND

On October 31, 2024, the parties exchanged written discovery requests. Specifically, Plaintiff served Defendants Township of Toms River (the “Township”) and Daniel T. Rodrick (the “Mayor”) (collectively, “Defendants”) with: (1) Plaintiff’s First Set of Interrogatories to the Township; (2) Plaintiff’s First Notice to Produce to the Township; (3) Plaintiff’s First Set of Interrogatories to the Mayor; and (4) Plaintiff’s First Notice to Produce to the Mayor. In a similar manner, Defendants served Plaintiff with interrogatories and document requests.

By the parties’ stipulated deadline of January 17, 2025, Plaintiff timely served Defendants with its discovery responses. Defendants, however, failed to produce any discovery responses by that time. As such, Plaintiff was forced to threaten motion practice. Under threat of motion, Defendants produce their discovery responses on January 22, 2025. Plaintiff, however, determined that they contained several deficiencies and issued a lengthy deficiency letter on February 6, 2025.

Following a case management conference on February 19, 2025, the Court entered a case management order on February 25, 2025 (the “CMO”). In Paragraph 1 of the CMO, the Court ordered that Defendants respond to Plaintiff’s deficiency letter by February 28, 2025, and directed that, if any discovery deficiencies remained thereafter, “the Party claiming the deficiency or deficiencies shall file a motion notice letter pursuant to Rule 4:105-4(c) outlining the issue(s) in dispute and requesting that the Court schedule a telephone conference to address the same.”

By correspondence dated March 3, 2025 (the “Deficiency Letter Response”), Defendants: (1) responded to Plaintiff’s deficiency letter dated February 6, 2025 (the “Deficiency Letter”); (2)

provided supplemental responses to Plaintiff's document requests; and (3) enclosed supplemental document production labeled Toms River_001984 through Toms River_007430. In the Deficiency Letter Response, Defendants clarified that, while supplemental interrogatory responses "ha[d] been prepared," Defendants had "not yet received certified responses from the Township," but would provide the same upon receipt. Defendants requested that Plaintiffs "allow the Township additional time, until March 7, 2025," to serve the supplemental responses.

On March 4, 2025, Plaintiff both responded to a deficiency letter it had received from Defendants and served Defendants with a Demand for Insurance Information pursuant to Rule 4:10-2(b) (the "Demand for Insurance Information"). In the Demand for Insurance Information, Plaintiff requested that Defendants, within ten (10) days: (1) "[s]tate whether there are any insurance agreements, including any and all primary, excess or umbrella insurance policies," that may satisfy part or all of the Judgment that may be entered in this action against the Township and/or the Mayor; and (2) "[p]roduce a copy of each such insurance agreement or policy."

After reviewing Defendants' first round of supplemental discovery, Plaintiff determined that Defendants' discovery responses remained deficient and issued a second deficiency letter on April 8, 2025 (the "Second Deficiency Letter"). In the Second Deficiency Letter, Plaintiff requested that Defendants address each deficiency outlined therein by April 14, 2025. In addition, Plaintiff stressed that Defendants' response to the Demand for Insurance Information remained outstanding and demanded production of the same. Plaintiff warned that, if Defendants did not comply, Plaintiff would file a motion notice letter in accordance with Paragraph 1 of the CMO. By e-mail correspondence dated April 13, 2025, Defendants' counsel acknowledged receipt of the Second Deficiency Letter and requested that Plaintiff's counsel "withhold any filing with the Court until Wednesday [*i.e.*, April 16, 2025]" as counsel expected to "be in a position to respond by then." Plaintiff's counsel followed up with Defendants' counsel on April 16, 2025, to indicate that Plaintiff would be expecting a response that day or otherwise be filing a motion notice letter.

On April 17, 2025, Defendants' counsel e-mailed Plaintiff's counsel stating that he "expected to have the additional documents ready to produce by [that day] but there was a mix-up with the e-discovery company and, despite [counsel's] best efforts, the documents [were] not ready to be disseminated." Defendants' counsel stated, "I hope to have those to attach to the supplemental discovery responses by the end of the week [*i.e.*, by April 18, 2025]." While Defendants' counsel attached to that e-mail a letter responding to Plaintiff's Demand for Insurance Information, that letter included disclosure of only a primary insurance policy. It did not disclose any excess or umbrella policies, as had been requested in the Demand for Insurance Information.

By correspondence dated April 18, 2025 (the "Second Deficiency Letter Response"), Defendants finally responded to the Second Deficiency Letter by producing: (1) the Township's Supplemental Responses to Interrogatories; (2) the Mayor's Supplemental Responses to Interrogatories; and (3) supplemental document production labeled "Toms River_007481-007990. That Response, however, failed to adequately address the deficiencies outlined in the Deficiency Letter and Second Deficiency Letter. As such, this motion notice letter follows.

ISSUES IN DISPUTE

Defendants have failed to adequately respond to Plaintiff's Deficiency Letter or Second Deficiency Letter, which outlined several deficiencies associated with Defendants' responses to: (1) Plaintiff's First Set of Interrogatories to the Township; (2) Plaintiff's First Notice to Produce to the Township; (3) Plaintiff's First Set of Interrogatories to the Mayor; and (4) Plaintiff's First Notice to Produce to the Mayor. In addition, Defendants have failed to provide a fully responsive response to Plaintiff's Demand for Insurance Information.

PLAINTIFF'S POSITION ON THE ISSUE

I. Defendants' Answers to Interrogatories

In Plaintiff's Deficiency Letter, Plaintiff thoroughly outlined several deficiencies associated with Defendants' answers to Plaintiff's First Set of Interrogatories. This included deficiencies associated with: (1) the Township's answers to Interrogatory Nos. 1, 7, 8, 9, 10, 11 and 12-15; and (2) the Mayor's answers to Interrogatory Nos. 1, 4, 7, 8, 9, 10, 11 and 12-15.

In the Deficiency Letter Response, Defendants' counsel indicated that supplemental interrogatory answers had been prepared, but were not certified, and requested until March 7, 2025, to serve the same. When that did not happen, Plaintiff served the Second Deficiency Letter on April 8, 2025. In response, Defendants' counsel indicated that he "ha[d] the certified supplemental interrogatories" and expected to produce them by April 15, 2025. Although Defendants finally produced supplemental interrogatory responses on April 18, 2025, they remain wholly deficient.

For example, while Plaintiff requested in Interrogatory No. 1 that Defendants identify the names, addresses, email addresses, and telephone numbers of "all persons who possess knowledge of any facts relevant to the claims, defenses, issues and allegations related to this lawsuit" – a customary interrogatory – Defendants have refused to specifically identify any person in response, claiming that the request for "all persons" with relevant knowledge is overbroad. Similarly, while Plaintiff requested in Interrogatory No. 7 that Defendants identify "each person" with whom they discussed the claims in this lawsuit – another customary interrogatory – Defendants have, again on disingenuous overbroad grounds, refused to specifically identify anyone. Defendants also refused to provide any information in response to Plaintiff's Interrogatory No. 8 to the Township/No. 9 to the Mayor, which asks Defendants to identify any actions in which they have "ever sued or been sued in court or arbitration," claiming that the terms "court" and "arbitration" are somehow confusing. Shockingly, Defendants instead attempted to shift their discovery obligation onto Plaintiff by directing Plaintiff to search eCourts for this information.

In Interrogatory Nos. 9-10 to the Township/Nos. 10-11 to the Mayor, Plaintiff asked Defendants to identify any "meetings," "discussions" or "communications" that they had since January 1, 2018, which relate to the subject matter of this lawsuit, and identify any "written or oral contracts, agreements or understandings" related to the same. In response, Defendants indicated that they would "provide responsive documents on a rolling basis" regarding the requested

meetings, discussions and communications, but asserted that no “oral contracts, agreements or understandings” were had. Plaintiff, however, has no way to corroborate this because Defendants have refused: (1) to turn over documents regarding their internal communications; or (2) identify anyone with whom they spoke regarding the subject matter of this case.

In light of all of this, Plaintiff’s position is that Defendants’ discovery conduct, which began as obstinacy, has now risen to the level of bad faith. Plaintiff’s position is that it is entitled to an Order requiring Defendants to cure each interrogatory answer deficiency set forth in the Deficiency Letter and Second Deficiency Letter and issuing sanctions.

II. Defendants’ Responses to Document Requests

In Plaintiff’s Deficiency Letter, Plaintiff thoroughly outlined several deficiencies associated with Defendants’ responses to Plaintiff’s First Sets of Document Requests. This included deficiencies associated with: (1) the Township’s responses to Document Request Nos. 1-6, 10-13, 16-29, 32-39, 40, and 41-42; and (2) the Mayor’s responses to Document Request Nos. 1-6, 10-13, 16-29, 32-40, 41-42, 43-45, 46, and 47-48.

These deficiencies most prominently focused on: (1) Defendants’ failure to specifically identify in their written responses which documents within their voluminous production were responsive to which Document Requests; and (2) Defendants’ failure to produce all communications (including e-mails and text messages) exchanged between the Township or the Mayor, on one hand, and certain specific persons and entities, on the other hand, relating to Plaintiff, the Redevelopment Plan, the Redevelopment Agreement, the Project, the Property, proposed or ongoing redevelopment in the Township, or any other subject matter of this lawsuit.

In Defendants’ Deficiency Letter Response, Defendants failed to at all address these deficiencies. Instead, Defendants interposed baseless objections to Plaintiff’s subject Document Requests, such as by contending that they “requested an expansive array of documents” given their use of the phrase “any and all” at the beginning of the Document Request. Defendants did not, because they cannot, cite any legal support for this frivolous position. To make matters worse, after Defendants set forth this baseless objection in their Deficiency Letter Response, they nevertheless indicated, “See additional Bates stamped documents in Toms River Production Volume 1.” This referred to the 5,446 additional documents that Defendants produced in their supplemental production labeled Toms River_001984 through Toms River_007430.

It is unfathomable that – in response to Plaintiff’s claimed deficiency that Defendants failed to specifically identify which documents in their initial production of nearly 2,000 pages (*i.e.*, Toms River_000001 through Toms River_001983) responded to each Document Request – Defendants would do nothing more than refer Plaintiff to Defendants’ supplemental production of nearly 5,500 additional pages (*i.e.*, Toms River_001984 through Toms River_007430), once again without specifically indicating which documents respond to each Document Request. Even with respect to Defendants’ most recent supplemental production (*i.e.*, Toms River_7481-7990), Defendants again failed to identify which documents respond to each Document Request.

What is more, based on Plaintiff's review of the approximately 8,000 documents that Defendants have produced to date, they are substantially devoid of any of the internal communications that Plaintiff requested of Defendants. This includes, most essentially, any communications that the Mayor sent or received since assuming office on January 1, 2024, relating to Plaintiff, the Redevelopment Plan, the Redevelopment Agreement, the Project, the Property, proposed or ongoing redevelopment in the Township, or any other subject matter of this lawsuit. Perhaps most egregiously, while hundreds of the documents in Defendants' production contain nothing more than a cover page indicating "DOCUMENT INTENTIONALLY OMITTED – SEE PRIVILEGE LOG," Defendants have not provided any privilege log to Plaintiff to date.

Like with their interrogatory answers, Defendants' failure to (1) cure each of Plaintiff's claimed deficiencies concerning Defendants' document responses, (2) provide fully responsive document production that includes the essential internal communications sought, and (3) produce a privilege log for the hundreds of documents they are apparently withholding, is emblematic of Defendants' bad faith in this discovery process. Plaintiff's position is that it is entitled to an Order requiring Defendants to cure these deficiencies and issuing sanctions.

III. Defendants' Response to Plaintiff's Demand for Insurance Information

While Defendants provided (albeit, belatedly) information regarding a primary insurance policy in response to Plaintiff's Demand for Insurance Information, that response was deficient because it lacked any of the excess or umbrella insurance information sought in the Demand.

DEFENDANTS' POSITION ON THE ISSUE

Defendants have responded to the Deficiency Letter and Second Deficiency Letter by way of the Deficiency Letter Response and Second Deficiency Letter Response. In those responses, Defendants continue to interpose baseless objections, and provide supplemental discovery responses and documents that remain woefully deficient and incomplete. Defendants also seem to believe that they can take their time producing different "rolling productions" that are largely non-responsive, and withhold hundreds of purportedly privileged documents without even providing a privilege log or identifying what those documents are.

Based on the foregoing, we request that the Court schedule a telephone conference pursuant to Rule 4:105-4(e) to attempt to resolve this issue before aggressive motion practice ensues.

We thank the Court for its time and consideration of this matter.

Respectfully submitted,

/s/ Steven G. Mlenak

Steven G. Mlenak

cc: All counsel of record (via eCourts)