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PAL PARK BOYS, LLC, Plaintiff, vs. CITY OF HOBOKEN, RAVINDER SINGH BHALLA, and JOHN DOES 1-5, Defendants,	APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY DOCKET NO. A-001763-24 Team 02 **Civil Action** DOCKET NO. HUD-L-2720-24 Sat Below: Hon. Jane L. Weiner, J.S.C.

DEFENDANTS-APPELLANTS' CITY OF HOBOKEN AND RAVINDER SINGH BHALLA'S *AMENDED* BRIEF ON APPEAL

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PRELIMINARY STATEMENT

Plaintiff, Pal Park Boys, LLC ("Plaintiff" and/or "Pal Park"), alleges the City of Hoboken (the "City") and Ravinder Singh Bhalla ("Mayor Bhalla) (collectively, the "Appellants"), tortiously interfered with its prospective economic advantage arising from the "intended" landlord/tenant relationship by and between Plaintiff and non-party Nature's Touch Med NJ, LLC ("Nature's Touch").

Specifically, Plaintiff claims that in or about late December 2021, it entered into a "proposal to lease" property to Nature's Touch who intended to operate a medical cannabis dispensary at the commercial location. However, in January 2022, Mayor Bhalla refused to sign a letter of support with respect to Nature's Touch's application for a medical cannabis dispensary license. As a result, Nature's Touch could not proceed with its application for a license from the State of New Jersey and did not enter into the proposed lease with Plaintiff.

Despite knowing, as of January 2022, that Mayor Bhalla failed to sign a letter of support, that Nature's Touch could not proceed with its application to obtain a license to operate a medical cannabis dispensary from the State of New Jersey, and that the "proposed lease" was not executed by Nature's Touch, Plaintiff failed to timely file a Notice of Tort Claim and instead waited until over two (2) years later to do so, in contravention of N.J.S.A. § 59:8-8.

On May 3, 2024, Pantaleo Pellegrini ("Pellegrini"), the former Director of Health and Human Services for the City, filed a Complaint in the Superior Court of New Jersey, Hudson County (the "Pellegrini Action"), alleging the Appellants retaliated against him in violation of N.J.S.A. § 34:19-3. Pellegrini purports, among other things, that Mayor Bhalla quashed the award of the cannabis license to Nature's Touch and supported the application for a cannabis license filed by Jaclyn Thompson ("Thompson"), wife of Jersey City Mayor Steven Fulop ("Fulop"), in exchange for Fulop providing Mayor Bhalla's personal law firm with contract work from Jersey City. Yet, such spurious allegations were only made **after** Pellegrini resigned from his employ with the City, in lieu of termination, due to the discovery that he embezzled and stole from the City, crimes for which Pellegrini recently pleaded guilty to in the Federal District Court.

Relying exclusively on Pellegrini's allegations, which Plaintiff purports to have learned of on May 17, 2024, Plaintiff filed its Notice of Tort Claim on or about August 5, 2024. Notably, Plaintiff did not seek leave to file a late Notice of Tort Claim, invoking the discovery rule pursuant to N.J.S.A. § 59:8-9. Instead, Plaintiff took the unilateral position that requesting leave was unwarranted because the accrual date of its cause of action was tolled under the discovery rule. However, such action was procedurally improper as it deprived the Court and Appellants of the opportunity to establish the proper accrual date of Plaintiff's claim based upon

Plaintiff's knowledge of the relevant facts and parties who, purportedly, were responsible for its alleged injury. As a result of Plaintiff's procedural gamesmanship, the burden and onus was unfairly shifted to Appellants to seek dismissal of Plaintiff's Complaint by way of a Motion to Dismiss rather than requiring Plaintiff to establish its entitlement to file a late Notice of Tort Claim.

By Order dated January 31, 2025, the Court denied Appellants' Motion under the flawed analysis that the discovery rule was applicable and Plaintiff's Notice of Tort Claim was timely. The Court denied the Motion despite the indisputable date of Plaintiff's alleged injury and without a finding that some unknow third party might be responsible for Plaintiff's alleged injury. support

Pertinently, the Mayor was **not** some unknown third party whom Plaintiff belatedly learned was the cause of its purported injury which Plaintiff knew accrued as of January 2022. Thus, even if Plaintiff learned of the Mayor's purported reason(s) for refusing to issue the letter of support by way of the commencement of the Pellegrini Action in May 2024, the discovery rule is wholly inapplicable as Plaintiff knew in January 2022 that the letter of support was not issued. Plaintiff's attempts to bootstrap the alleged basis of its injury to when it learned of Mayor Bhalla's purported motives, gleaned from the filing of Pellegrini's Complaint is not proper since the Mayor was always known to Plaintiff. The Trial Court, therefore, erred in denying Appellants' Motion to

Dismiss and finding Plaintiff's time to file its Notice of Tort Claim was tolled pursuant to the discovery rule.

STATEMENT OF FACTS & PROCEDURAL HISTORY[1]

Plaintiff is a limited liability company owning property located at 1014 Washington Street, Hoboken, New Jersey (the "Property"). Nature's Touch is a limited liability company which sought a license from the State to operate a medical marijuana dispensary at the Property. According to Plaintiff, on December 28, 2021, it entered into an "agreement" to lease space at the Property with Nature's Touch. See, Da27, Complaint at ¶ 3. However, contrary to Plaintiff's assertions, there only ever existed a "proposal to lease" rather than any "agreement" by and between Plaintiff and Nature's Touch. See, Da34.

On January 10, 2022, the Mayor declined to sign a letter of support regarding Nature's Touch's pending application for a license to operate a medical cannabis dispensary in the City. As a result, Nature's Touch decided not to lease the Property which, according to Plaintiff, remained without a lessor from January 2022 to April

[1] The Statement of Facts & Procedural History are combined because the underlying facts and procedural history are inextricably interwoven with the core legal issue on appeal: whether, the trial court erred in denying Respondents' Cross-Motion to Dismiss the Complaint based upon Plaintiff's failure to timely comply with the notice and procedural requirements set forth in the Tort Claims Act, N.J.S.A. §§ 59:8-8 and 59:8-9, and instead relieving Plaintiff of said requirements though application of the discovery rule.

2023. See, Da30, Complaint at ¶ 24. Yet, Plaintiff did not file a Notice of Tort Claim within ninety (90) days of learning that Nature's Touch was not entering into the proposed lease agreement, as required by N.J.S.A. §59:8-8. Instead, Plaintiff filed its Notice of Tort Claim over two and a half (2.5) years later, on or about August 5, 2024 (Da36), after purportedly learning of the allegations set forth in the Pellegrini Action.

On or about September 27, 2024, after the trial court granted a motion to file a late notice of claim filed on behalf of Nature's Touch, Nature's Touch commenced an action by filing a Complaint containing five (5) undefined causes of action against the City, Mayor Bhalla, Steven Fulop, Jaclyn Thompson and various John Does, purportedly arising from Mayor Bhalla's refusal to issue a letter of support supporting Nature's Touch's application for a license to operate a medical cannabis dispensary in the City (the "Nature's Touch Action"). (Da79). Notably, the Nature's Touch Action is presently before the Appellate Division as of right pursuant to R. 2:2-3 (b) (7), [Appellate Docket Number A-000722-24] as Appellants are appealing the lower court's Order *granting* Nature's Touch's motion for leave to file a late notice of claim.

On November 8, 2024, without first filing a Motion to File a Late Notice of Claim, Plaintiff commenced this action by filing its Complaint, asserting a single cause of action for tortious interference with economic advantage. (Da27) On

November 12, 2024, Plaintiff filed a Motion to Consolidate this proceeding with the Nature's Touch Action.

In response, Appellants filed a Notice of Cross-Motion to Dismiss pursuant to R. 4:6-2(e). (Da12) One of the arguments made by Appellants was that Plaintiff failed to timely file a Notice of Tort Claim pursuant to N.J.S.A. 59:8-8. Plaintiff thereafter filed a Reply which included a Certification with Exhibits (Da72).

After hearing oral argument with respect to aforesaid motions, by Order dated January 31, 2025 (Da10)[2], the Trial Court denied Appellants' Cross-Motion to Dismiss on the basis that, among other things, the discovery rule applied and Plaintiff's August 5, 2024 Notice of Tort Claim was timely filed.[3]

On February 20, 2025, Appellants filed a Notice of Appeal of the January 31, 2025 Order, appealing the trial court's exception to the finality rule provided by R. 2:2-3 (b) (7). (Da1). However, by letter dated February 21, 2025, the Clerk of the Appellate Division questioned whether Appellants were entitled to bring this appeal as of right insofar as the Order being appealed was not "final". To resolve this conflict, Appellants filed a Motion for Leave to file an appeal of the Trial Court's

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[2] On January 31, 2025, the lower court placed its decision on the record. The transcript of the January 31, 2025 proceedings is referred to herein as 1T followed by the applicable page and line numbers.

[3] The Court denied Plaintiff's Motion to Consolidate on the basis that the trial court lacks jurisdiction over the Nature's Touch Action during the pendency of the Appeal. (Da124; 1T 25:18 to 26:23).

denial of Appellants' Cross-Motion to Dismiss based upon the Trial Court's finding that Plaintiff's time to file a Notice of Tort Claim was tolled pursuant to the discovery rule. Appellants also filed a Motion for their appeal to be deemed filed within time. Said Motions were granted (Da6, Da8). Appellants now file this Brief on Appeal.

LEGAL ARGUMENT

I. THE TRIAL COURT ERRED IN FAILING TO DISMISS PLAINTIFF'S COMPLAINT DUE TO PLAINTIFF'S FAILURE TO FILE A TIMELY NOTICE OF TORT CLAIM.

(Issue addressed by trial court at 1T19:17 to 21:10)

It is well settled that the TCA "provides 'broad but not absolute immunity for all public entities,'" (Jones v. Morey's Pier, Inc., 230 N.J. 142, 154 (2017) quoting Marcinczyk v. N.J. Police Training Comm'n, 203 N.J. 586, 597 (2020)), and its 'guiding principle' is 'that immunity from tort liability is the general rule and liability is the exception.'" O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 345 (2019) (quoting D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 134 (2013)).

Further, the TCA defines the circumstances for when a plaintiff may bring tort claims against public entities (see D.D., 213 N.J. at 133-34), and "establishes the procedure by which claims may be brought." Rogers v. Cape May Cnty. Off. Of Publ. Def., 208 N.U. 414, 420 (2011) (quoting Beauchamp v. Amedio, 164 N.J. 111, 116 (2000)). In that connection, the TCA requires a plaintiff asserting tort claims against a public entity or employee serve the entity or employee with notice of the

claim within ninety (90) days of the accrual of the claim. N.J.S.A. 59:8-8. See also, 236 N.J. at 345.

The TCA's requirements are "strictly construed." McDade v. Siazon, 208 N.J. 463, 474 (2011) (quoting Gerber ex rel. Gerber v. Springfield Bd. of Educ., 328 N.J. Super. 24, 34 (App. Div. 2000)). Thus, a plaintiff who fails to timely serve a notice of tort claim "shall be forever barred from recovering against a public entity." N.J.S.A.59:8-8. The harshness of N.J.S.A. 59:8-8's ninety (90) day requirement, however, is alleviated by N.J.S.A. 59:8-9 (Rogers, 208 N.J. at 420-21), which "permits a court to allow a plaintiff to file a later notice of claim under 'extraordinary circumstances,' if the **motion is made within one year of the accrual of the claim.**" Id. at 427 (emphasis added) (quoting Lowe v. Zarghami, 158 N.J. 606, 613 (1999)); see also, O'Donnell, 236 N.J. at 345-46.

A "sequential analysis" is required to determine whether a notice of claim is timely filed under N.J.S.A. 59:8-8. Beauchamp, *supra*, 164 N.J. at 118. "The first task is always to determine when the claim accrued." Id. After the date of accrual is ascertained, the Court must "determine whether a notice of claim was filed within ninety days." Id. When a notice of claim is not filed within ninety (90) days, the Court must determine if the claimant demonstrates "extraordinary circumstances justifying a late notice" under N.J.S.A. 59:8-9. Id. at 1128-19. However, as set forth hereinabove, if a claim was not filed within one (1) year from the date of accrual,

the Court is without authority to allow the filing of a late notice of claim. Pilonero v. Twp. of Old Bridge, 236 N.J. Super. at 532.

Here, it is undisputed that: (1) Plaintiff failed to file its Notice of Tort Claim within the requisite ninety (90) days from the date the cause of action accrued; (2) Plaintiff's time to file a Notice of Tort Claim was not tolled by the discovery rule as there was no third-party responsible for Plaintiff's purported injury who was unknown to Plaintiff; and (3) Plaintiff failed to seek leave to file a late Notice of Tort Claim. Thus, Plaintiff failed to satisfy the "sequential analysis" mandated by Beauchamp, and the Trial Court erred in denying Appellants' Motion to Dismiss.

A. Plaintiff's Cause Of Action Accrued In January 2022.

Although N.J.S.A. §59:8-1 does not define the date of accrual in any significant way, the comment to that section states: "[i]t is intended that the term accrual of a cause of action shall be defined in accordance with existing law in the private sector." Id. at 116, citing, Harry A. Margolis & Robert Novack, *Claims Against Public Entities,* 1972 Task Force Comment to N.J.S.A. 2:2-3, (Gann 2000). In that connection, our Supreme Court has found "[a] claim accrues on the date of the accident or incident that gives rise to any injury, however slight, that would be actionable if inflicted by a private citizen." Id. Accordingly, a cause of action ordinarily accrues "when any wrongful act or

omission resulting in any injury, however slight, for which the law provides a remedy, occurs." Id. at 116 (citations omitted).

The New Jersey Supreme Court further recognizes the private sector law "holds that a claim accrues on the date on which the underlying tortious act occurred," but that the "same common law allows for delay of the legally cognizable date of accrual when the victim is unaware of his [or her] injury or does not know that a third party is [liable] for the injury." See, Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017); see also, Beauchamp, 164 N.J. at 118-119. Thus, the Court has applied the discovery rule to determine the date of accrual of a claim under the Tort Claims Act, N.J.S.A. 59:1-1, et. seq. (the "TCA") (Id.) and held the accrual date for a claim under the TCA "is tolled from the date of the tortious act or injury when the injured party either **does not know of his injury** or **does not know that a third party is responsible for the injury**." Id. (citing McDade, 208 N.J. at 475) (emphasis added); see also, Beauchamp, 164 N.J. at 117-119 (same).

Discovery does not require knowledge of a legal injury or awareness of all the evidence that will ultimately be relied upon. See Freeman v. State, 347 N.J. Super. 11, 22, 788 A.2d 867 (App. Div. 2002) (citing Baker v. Bd. of Regents, 991 F.2d 628, 632 (10th Cir. 1993)) (holding that an action under 42 U.S.C. §1983 accrues when a plaintiff knows or has reason to know of the injury

which is the basis of his action, and ignorance of legal rights does not toll the statute of limitations). Indeed, the purpose requiring the filing of a Notice of Tort Claim is to allow the public entity to review and investigate a claim, afford it the opportunity to settle the claim, allow it to correct the conditions or practices that gave rise to the claim, and give it advance notice of its potential liability. Velez v. City of Jersey City, 180 N.J. 284, 290, 850 A.2d 1238 (2004). Yet, despite knowing of its purported injury and who was responsible for same, Plaintiff took no action whatsoever.

Under the false rubric that the Cannabis Board approved Nature's Touch's cannabis license, Plaintiff alleges that, as a direct and proximate cause of the actions of Mayor Bhalla acting in the capacity of Mayor of the City, it was deprived of the opportunity to lease the Property to Nature's Touch, for the purpose of operating said medical cannabis dispensary for a lease term of no less than ten years with a five year option. Da30 .

However, the Board never "approved" the award of the medical retail cannabis license to Plaintiff. The Board serves solely as an "advisory committee to the City" (Hoboken Municipal Code at § 36-1). Thus, the board simply reviewed Plaintiff's application and provided its endorsement pursuant to § 36-4A of the Hoboken Municipal Code. Mayor Bhalla, thereafter, rejected the

Board's endorsement and refused to execute a letter of support, effectively nullifying Plaintiff's application to the State.

As such, and as acknowledged in the Complaint, Plaintiff was aware since January 10, 2022, that: (i) the Board voted to endorse its application for a cannabis license; (ii) the Mayor did **not** issue a letter of support despite the Board's endorsement; (iii) without the Mayor's letter of support, the New Jersey Cannabis Regulatory Commission (the "NJCRC") would not issue Plaintiff a license to operate a medical cannabis dispensary license; and (iv) as a result, Nature's Touch DID NOT enter into a lease agreement with Plaintiff. Da29-30.

Plaintiff was further wholly aware as of January 10, 2022, that it suffered an injury; to wit: the loss of profits due to Nature's Touch failure to enter into a lease agreement. Plaintiff was also aware that the loss of such profits was the result of Mayor Bhalla refusing to issue a letter supporting Plaintiff's application for a cannabis dispensary license, despite the Board's endorsement. Da30-31.

Thus, it is indisputable that Plaintiff's cause of action against Appellants accrued as of January 10, 2022, and Plaintiff's time to file a Notice of Tort Claim expired ninety (90) days later, as of April 10, 2022. The Trial Court, therefore, was without authority to relieve Plaintiff of the express filing requirements set forth under the Tort Claims Act (the "TCA").

B. <u>The Lower Court Erred In Relying Upon Beauchamp v. Amedio To Find The Discovery Rule Tolled Plaintiff's Time To File Its Notice Of Tort Claim</u>.

The Trial Court further erred in accepting Plaintiff's Notice of Claim as timely filed when same was filed on August 5, 2024, **over two and a half (2.5) years** from the date in which the action accrued, based upon the tolling provision provided by the discovery rule, as there existed no third party formerly unknown to Plaintiff who, allegedly, caused Plaintiff's injury. The Trial Court's reliance upon <u>Beauchamp</u>, *supra*. (1T20:8-16), for such legal proposition is, thus, misplaced.

In <u>Beauchamp</u>, the Supreme Court found that, typically, the date of accrual is the "date of the incident on which the negligent act or omission took place." 1T20:17-20. However, "[a]n exception to this is the discovery rule where the victim either is unaware that he or she has been injured, or although aware of an injury, does not know that a third party is responsible. 1T20:21-25 (citing <u>Beauchamp</u>, 164 N.J. at 117.

Applying such exception, the Trial Court found that:

> The mere fact that the license was denied did not in and of itself give rise to a lawsuit. Although plaintiff knew it had been deprived of the lease with Nature's Touch, it was not until the article was published on May 17th, 2024, that it learned the deprivation may have been caused by an unlawful act by Mayor Bhalla. 1T21:3 to 10.

Yet, even if true, Plaintiff's presumed lack of knowledge of Mayor Bhalla's purported "unlawful act" does not justify application of the discovery rule and cannot serve as a basis to permit Plaintiff to file a Notice of Tort Claim over two (2) years after the accrual of its action since Mayor Bhalla's involvement was always known to Plaintiff.

Plaintiff's assertion that it only learned of Mayor Bhalla's purported motive for refusing to support Nature's Touch's application upon viewing the news article regarding the allegations set forth in the Pellegrini Complaint is also of no consequence in determining when Plaintiff's action accrued, and by extension, when a Notice of Tort Claim was required to be filed pursuant to the TCA.

Firstly, Pellegrini's allegations are nothing more than the wild, false accusations of a disgruntled former employee of the City who is publicly seeking revenge against Appellants due to Mayor Bhalla seeking Pellegrini's voluntary resignation for his illegal activities. Indeed, since filing his Complaint, Pellegrini pled guilty to embezzling money from the City and filing false tax returns in the United States District Court, District of New Jersey. (Da16, Da144).

Secondly, and more importantly, the accrual date of a cause of action is not tolled where, as here, a clearly identifiable action (or inaction) purportedly

causing plaintiff's injury; to wit: the refusal to propound a letter of support which allegedly prevented Nature's Touch from entering into the proposed lease agreement with Plaintiff, was perpetrated by an identifiable, non-third party – Mayor Bhalla - on a date known to Plaintiff.

For example and by way of analogy, in matters wherein a plaintiff alleges he/she was subject to a discriminatory or retaliatory employment action by way of termination or denial of promotion in violation of New Jersey's Law Against Discrimination, N.J.S.A. 10:5-1 et. seq. (the "LAD"), the plaintiff's cause of action typically accrues on the date the employee is subjected to such discrete adverse action. See, e.g. Roa v. Roa, 200 N.J. 555, 561, 985 A.2d 1225 (2008) (plaintiff's wrongful termination claim pursuant to the LAD matter accrued on the date of plaintiff's termination, not on the date he discovered a post-discharge act of retaliation); see also, Kaminski v. Twp. of Toms River, 2013 U.S. Dist. LEXIS 199835 at * 29 (Da126, Da136), (District Court found plaintiff's failure to promote claim accrued when the promotion list was promulgated to all personnel, and plaintiff's discovery that he was deceived about the underlying motive behind his lack of promotion was irrelevant for the purposes of the discovery rule); but see, Henry v. New Jersey Dept. of Human Services, 204 N.J. 320, 9 A.3d 882 (2010) (holding that while there was no equitable basis to extend the statute of limitations on plaintiff's retaliation claim, which accrued on the

date she resigned after being told that if she had not complained, she may have been reclassified [for higher pay], a hearing was required to determine whether the discovery rule applied to a discrimination claim because plaintiff may have had no reasonable suspicion she was discriminated against based upon misleading information and reasons provided to her about not being reclassified.) Thus, the Trial Court's application of the discovery rule pursuant to Beauchamp, was wrong.

Moreover, unlike the present matter, Beauchamp did **not** involve tolling the filing of a Notice of Tort Claim due to the late discovery of the alleged *motive* of the public actor responsible for plaintiff's injury. Rather, the issue before the Beauchamp Court concerned whether plaintiff's cause of action accrued on the date of the subject accident or when plaintiff **learned her resulting injury was permanent**. Notably, the Court in Beauchamp held plaintiff's cause of action *accrued* on the date of her accident, NOT when she learned of the permanency of her injury. However, because of "confusion" as to the issue at the time, the Court held extraordinary circumstances warranted the filing of a *late* notice of claim against the third party.[4]

[4] Further, unlike the situation presented here, plaintiff in Beauchamp sought leave to file her notice of claim within **one (1) year** from the date in which her action accrued - the date of the accident, which is permissible under the TCA.

Here, Plaintiff knew as of January 10, 2022, that Mayor Bhalla refused to sign the letter of support and, as a result, in part prevented Nature's Touch from proceeding with its application with the State of New Jersey to obtain a license to operate a medical marijuana dispensary in the City. Plaintiff also knew, before January 10, 2022, that Nature's Touch had not entered into the proposed lease. Indeed, according to Plaintiff, the lease was supposed to have commenced on January 1, 2022. [Da28 at ¶10, and Da34).

Thus, while Plaintiff may not have known of Mayor Bhalla's reasons for refusing to support Natures' Touch's application, like Beauchamp, Plaintiff knew an injury had occurred and who was responsible for that injury. No unknown, potentially liable third party existed. Consequently, Plaintiff's claim against Appellants accrued as of January 10, 2022, and the Trial Court erred in finding Plaintiff's time to file a Notice of Tort Claim was tolled by virtue of the discovery rule.

C. Reliance On Ben Elazar v. Macrietta Cleaners, Inc. Is Also Misplaced.

In opposing Appellants' Motion to Dismiss, Plaintiff relied upon Ben Elazar v. Macrietta Cleaners, Inc., *supra,* 230 N.J. 123, for the proposition that leave should be granted because it only learned the Appellants caused its injury by virtue of May 17, 2024 news article regarding the Pellegrini Complaint. However, Ben Elazar is wholly distinguishable and does not support tolling the

time in which Plaintiff was required to file its Notice of Claim. Accordingly, Ben Elazar is neither relevant nor binding with respect to this appeal.

In Ben Elazar, after experiencing health issues for many years, plaintiffs learned that Cranford Township was partially responsible, in addition to the initially named private party Appellants, for the toxic contamination to their property causing their health problems. The New Jersey Supreme Court held that, for purposes of summary judgment, the plaintiffs' claim against the township accrued when they learned that some of the contaminants had been stored on township land. The Court reasoned that " . . . the [information received by plaintiffs in] 2011 do[es] not demonstrate that plaintiffs either knew or should have known that a [third party] public defendant might have been responsible for their injuries, triggering the exceedingly short time granted for presentation of the notice of claim required by the Tort Claims Act." Id. at 141.

Here, Plaintiff was well aware as of January 10, 2022, that: (i) the Mayor refused to issue a letter of support; (ii) the City had not adopted a resolution endorsing Nature's Touch's application; (iii) the NJCRC would not issue it a license to operate a medical marijuana dispensary without support from Appellants; (iv) Nature's Touch had not entered into a lease agreement with Plaintiff and (iv) Plaintiff would not reap the economic benefits of leasing its property to Nature's Touch for the purpose of operating a medical marijuana

dispensary in the City as the result of Nature's Touch not being issued the requisite license.

Accordingly, unlike Ben Elazar, Plaintiff knew (or had reason to know) Mayor Bhalla, a non-third party public defendant, was responsible for its purported injuries as it knew Mayor Bhalla (and by extension, the City) was responsible for Nature's Touch not obtaining a letter of support in connection with its application for a cannabis license. Said another way, Mayor Bhalla was not an unknown public entity party and Plaintiff knew on January 10, 2022, that Mayor Bhalla's refusal to issue the letter of support would prevent Nature's Touch from getting a license to dispense cannabis and would further prevent execution of a lease agreement with Plaintiff.

Consequently, Plaintiff knew no later than January 10, 2022, that it would not reap the benefit of the prospective economic rewards attendant with the lease and operation of a cannabis dispensary on the Property. Thus, when Plaintiff first learned of Mayor Bhalla's purported and contested motive for refusing to support Nature's Touch's application is of no moment and cannot serve as a basis to invoke the discovery rule. Therefore, the ninety-day (90) period for presentation of the Notice of Tort Claim was sufficiently triggered in January 2022, and the Trial Court erred in denying Defendant's Motion to Dismiss.

D. The Trial Court Erred In Failing To Dismiss Plaintiff's Complaint Due To Plaintiff Failing to File a Motion Seeking Leave To File A Late Notice Of Tort Claim.

Rather than file a Motion seeking leave to file a late Notice of Tort Claim pursuant to N.J.S.A. 59:8-9, Plaintiff took the position that the discovery rule applied without first presenting the issue to the lower court for adjudication. As explained hereinabove, the issue of the accrual of Plaintiff's TCA claim is a matter of law to be determined by the courts. Beauchamp, 164 N.J. at 117-19. Moreover, by failing to file the requisite motion, Plaintiff improperly shifted the burden to Defendant to establish the accrual date of Plaintiff's cause of action and challenge Plaintiff's late filing by way of a Motion to Dismiss.

Furthermore, the discovery rule does not obviate the need to comply with the requirements of N.J.S.A. 59:8-8 and N.J.S.A. 59:8. McDade v. Siazon, 208 N.J. 463, 469 (2011) (holding that because plaintiffs declined to invoke the statutory procedure by which a court determines whether the late filing of a notice of claim can be excused, the defendant public entity is entitled to summary judgment).

For instance, in McDade, the Appellate Division granted the public entity's motion for leave to appeal with respect to the trial court's application of the discovery rule as a basis to deny the public entity's motion for summary judgment where no motion for leave to file a late notice of claim had been filed

by the plaintiff. In such case, plaintiff was injured after tripping on a pipe protruding from the sidewalk. Within ninety days of the injury, plaintiff served a notice of claim upon the Township. After the ninety (90) day period had passed, the Township's administrator sent plaintiff a letter stating the pipe was a sewer clean that was under the jurisdiction of the Municipal Utility Authority (the "MUA"), a separate legal entity over whom the Township had not jurisdiction.

Rather than file a motion for leave to file a late Notice of Tort Claim, McDade merely served an amended Notice of Tort Claim naming, for the first time, the MUA. Almost two (2) years after the accident, McDade filed suit naming the MUA without ever having first sought leave to file a late notice of claim. The MUA moved for summary judgment for failure to timely file a notice of claim. The trial court denied said motion on the basis that the discovery rule applied. The Appellate Leave granted the MUA's motion for leave to appeal and reversed the decision of the trial court on the basis that because McDade had failed to conduct a diligent investigation as to the owner of the pipe, and **failed to file a motion for leave to file a late notice of claim, the discovery rule did not apply**. McDade then sought certification of the Supreme Court which Certification was granted.

In assessing the proceedings below, the Supreme Court was highly critical of "[p]laintiffs' decision to forego the filing of a motion for leave to file a late notice of claim under N.J.S.A. 59:8-9". Id. at 479. The Supreme Court noted that in so doing, plaintiff:

> Deprived the trial court of the opportunity to apply the legal standard prescribed by the Legislature … [h]ad plaintiffs acknowledged that they had not served the appropriate entity, and filed a motion for leave to file a late notice of claim within the year-long period afforded by the statute, the trial court could have evaluated the circumstances of this case within the correct legal framework. With no motion under N.J.S.A. 59:8-9 before it, however, the trial court incorrectly relied upon the discovery rule to deny the MUA's motion for summary judgment.

Id. at 479-480.

Like in McDade, Plaintiff failed to seek leave of the court to file a late Notice of Tort Claim, thereby depriving the trial court of the opportunity to determine whether or not the discovery rule could be invoked BEFORE Plaintiff filed the August 2024 Notice of Tort Claim. By engaging in such gamesmanship, Plaintiff deprived Appellants of the opportunity to pursue an appeal as of right pursuant to R. 2:2-3(b)(7), by taking the position that the Court's Order denying Defendant's Motion to Dismiss is not "final." However, because Plaintiff never sought leave by way of the requisite Motion to file a late Notice of Tort Claim,

the Trial Court should have considered the Notice of Tort Claim filed by Plaintiff on August 5, 2025, a nullity.

Accordingly, with no motion filed under N.J.S.A. 59:8-9 before it, the trial court erred in relying upon the discovery rule to deny Appellant's Motion to Dismiss.

CONCLUSION

For the foregoing reasons, the trial court's Order denying Appellants' motion to dismiss should be reserved and Plaintiff's action should be dismissed with prejudice due to its failure to comply with the notice provisions of the Tort Claims Act.

Respectfully submitted,

/s/ Daniel Antonelli
Daniel Antonelli

Dated: May 12, 2025

PAL PARK BOYS, LLC, **Plaintiff-Respondent,** **v.** **CITY OF HOBOKEN, RAVINDER SINGH BHALLA, and JOHN DOES 1-5,** **Defendants-Appellants.**	**SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION** **Docket No. A-001763-24 Team 02** **Civil Action** **On Appeal From: Order from Superior Court of New Jersey Law Division, Hudson County Docket No. HUD-L-2720-24** **Sat below:** **Hon. Jane L. Weiner, J.S.C.** **Date of submission:** **June 12, 2025**

BRIEF OF PLAINTIFF-RESPONDENT PAL PARK BOYS, LLC

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PRELIMINARY STATEMENT

The trial court's January 31, 2025, Order denying Defendants-Appellants' (City of Hoboken and Mayor Ravinder Singh Bhalla, collectively, "Defendants") motion to dismiss Plaintiff-Respondent Pal Park Boys, LLC's ("Plaintiff") Complaint is a paragon of judicial reasoning and must be affirmed. Plaintiff, a small business owner, alleges that Defendants engaged in a shocking scheme to tortiously interfere with its prospective economic advantage by quashing a cannabis dispensary license for its tenant, Nature's Touch, LLC, in favor of a politically connected applicant. This alleged misconduct, cloaked in secrecy until revealed by a May 17, 2024, *TAPinto Hoboken* article, caused Plaintiff to suffer significant financial harm, leaving its prime commercial property vacant for over a year.

The trial court, presided over by the Honorable Jane L. Weiner, J.S.C., meticulously applied the "discovery rule" to find that Plaintiff's Notice of Tort Claim, filed on August 5, 2024, was timely, as Plaintiff only learned of Defendants' alleged corrupt motive on May 17, 2024. This ruling aligns with New Jersey's commitment to ensuring that legitimate claims against public entities are not prematurely extinguished, balancing the Tort Claims Act's ("TCA") protective framework with the rights of injured parties.

The court further held that Plaintiff's Complaint states a compelling claim for tortious interference with prospective economic advantage. Defendants' attempt to dismiss this claim as speculative ignores the liberal pleading standard under Rule 4:6-2(e), which requires only that the complaint suggest a cause of action. The trial court's order requiring Plaintiff to produce documents within seven days was a measured exercise of discretion, ensuring fairness without resorting to the drastic remedy of dismissal.

Defendants' appeal is a premature effort to shield alleged misconduct from scrutiny. Their arguments misapply TCA precedent, misconstrue the discovery rule, and improperly demand evidentiary proof at the pleading stage. This Court should affirm the trial court's decision, allowing Plaintiff's meritorious claim to proceed to discovery, where the truth of Defendants' actions can be fully explored. To do otherwise would undermine justice and reward opacity in public governance.

STATEMENT OF FACTS

Plaintiff Pal Park Boys, LLC ("Plaintiff"), a New Jersey limited liability company, owns valuable commercial property located at 1014 Washington Street in the heart of Hoboken, New Jersey. (Da27, Complaint ¶¶1-2). In late 2021, as New Jersey's medical cannabis market expanded, Plaintiff seized an opportunity to lease this prime location to Nature's Touch, LLC ("Nature's

Touch"), a company poised to operate a medical cannabis dispensary. (Da34; Da27, Compl. ¶3). On December 28, 2021, Plaintiff and Nature's Touch executed a detailed proposal to lease, outlining a ten-year term with a five-year option, an annual rent of $102,000.00 with 3% annual increases, a four-month security deposit, and an innovative provision entitling Plaintiff to 5% of Nature's Touch's gross sales. (Da28, Compl. ¶¶10-11). This agreement promised significant economic benefits, positioning Plaintiff to capitalize on Hoboken's nascent cannabis industry.

Nature's Touch diligently pursued a cannabis dispensary license from the City of Hoboken, submitting a comprehensive application that included details of the proposed lease. (Da28, Compl. ¶12). On January 7, 2022, the Hoboken Cannabis Review Board, comprising respected officials including Councilmen Michael Russo, Jason Freeman, and Director of Health and Human Services Pantaleo Pellegrini, unanimously approved Nature's Touch's application, signaling a clear path to state licensing. (Da28, Compl. ¶¶13-14). Plaintiff's expectations of a lucrative tenancy seemed assured.

However, on January 10, 2022, Mayor Ravinder Singh Bhalla abruptly refused to sign a letter of support required for Nature's Touch's state application, effectively derailing the licensing process. (Da29, Compl. ¶15).

Without this letter, Nature's Touch could not proceed, and it declined to execute the lease, leaving Plaintiff's property vacant from January 2022 to April 2023—a staggering 15-month period that cost Plaintiff $137,020.00 in lost rental income and 50% of the property's assessed taxes. (Da30, Compl. ¶24). At the time, Plaintiff had no reason to suspect anything beyond a routine administrative decision, as license denials can occur for myriad legitimate reasons. (1T:4:10-15).

The true nature of Bhalla's decision remained hidden until May 17, 2024, when a bombshell article in *TAPinto Hoboken* exposed allegations from Pantaleo Pellegrini's complaint (Docket No. HUD-L-1720-24). (Da74). The article reported that Bhalla quashed Nature's Touch's license to favor Jaclyn Thompson, wife of Jersey City Mayor Steven Fulop, in exchange for lucrative contract work from Fulop's administration to Bhalla's personal law firm. (Da74; Da19, 1T:19:6-14). Pellegrini, a former insider on the Cannabis Review Board, alleged that Bhalla disclosed this scheme during a January 14, 2022, lunch meeting with city officials, brazenly admitting his intent to prioritize Thompson's application for a 14th Street dispensary. (Da29, Compl. ¶¶16-18). Plaintiff first learned of this alleged corruption through the article, transforming a routine denial into a potential tortious act. (Da72, Bocchi Cert. ¶4). Acting

swiftly, Plaintiff filed a Notice of Tort Claim with the City of Hoboken on August 5, 2024, just 80 days after the article's publication. (Da36; Da30, Compl. ¶25).

PROCEDURAL HISTORY

On November 8, 2024, Plaintiff commenced this action, alleging one count of tortious interference with prospective economic advantage against the City of Hoboken, Mayor Bhalla, and John Does 1-5. (Da27-30). Plaintiff also moved to consolidate this case with Nature's Touch NJ, LLC v. City of Hoboken (Docket No. HUD-L-2720-24), which raises similar claims. (Da10).

Defendants responded with a cross-motion to dismiss under R. 4:6-2(e), arguing that Plaintiff's Notice of Tort Claim was untimely under N.J.S.A. 59:8-8, the Complaint failed to state a claim, and Plaintiff's failure to produce requested documents warranted dismissal. (Da12). On January 31, 2025, Judge Weiner issued a thorough oral decision, denying Defendants' motion to dismiss and Plaintiff's motion to consolidate. (Da10; 1T:19:17-26:23). The court found that the discovery rule tolled the claim's accrual until May 17, 2024, rendering the August 5, 2024, notice timely. (1T:21:3-14). It further held that the Complaint stated a viable tortious interference claim, as Plaintiff alleged a reasonable expectation of economic advantage, intentional interference,

causation, and damages. (1T:22:13-24:24). Finally, the trial court ordered Plaintiff to produce requested documents within seven days, rejecting dismissal as premature absent a violated discovery order. (1T:25:7-26:2).

Defendants appealed, challenging the trial court's application of the discovery rule and the denial of their motion to dismiss. (Da1). The Appellate Division granted leave to appeal on March 24, 2025. (Da6, Da8).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT CORRECTLY DENIED DEFENDANTS' MOTION TO DISMISS BECAUSE PLAINTIFF'S NOTICE OF TORT CLAIM WAS TIMELY FILED UNDER THE DISCOVERY RULE. (T19:24-21:10)

The trial court's denial of Defendants' motion to dismiss was a model of legal precision, correctly applying the discovery rule to find Plaintiff's Notice of Tort Claim timely under N.J.S.A. 59:8-8. The TCA governs claims against public entities, providing "broad but not absolute immunity" with liability as the exception. O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 345 (2019) (quoting D.D. v. Univ. of Med. & Dentistry of N.J., 213 N.J. 130, 134 (2013)). The TCA requires a notice of claim within 90 days of accrual, N.J.S.A. 59:8-8, but the discovery rule tolls accrual when a plaintiff is unaware of the injury or the

responsible party's wrongful conduct. Beauchamp v. Amedio, 164 N.J. 111, 117 (2000).

Defendants' appeal misinterprets the TCA and ignores the trial court's unassailable findings. Plaintiff's claim accrued on May 17, 2024, when it uncovered Bhalla's alleged corrupt motive, and the timely notice filed 80 days later fully complied with the TCA's requirements.

A. Plaintiff's Cause of Action Accrued on May 17, 2024, When it Learned of Defendants' Alleged Corrupt Conduct. (1T:20:25-21:10)

The trial court correctly held that Plaintiff's claim accrued on May 17, 2024, when the *TAPinto Hoboken* article revealed Mayor Bhalla's alleged scheme to quash Nature's Touch's license for personal gain. (1T:21:3-10; Da74). A claim accrues under the TCA "when any wrongful act or omission resulting in any injury, however slight, for which the law provides a remedy, occurs." Beauchamp, 164 N.J. at 116 (citing N.J.S.A. 59:8-1 cmt.). The discovery rule, a cornerstone of New Jersey's equitable jurisprudence, tolls accrual until the plaintiff knows or should know of the injury and the responsible party's role. Id. at 117; Lamb v. Global Landfill Reclaiming, 111 N.J. 134, 144 (1988) (tolling accrual until plaintiffs discovered the extent of contamination).

In January 2022, Plaintiff knew that Bhalla declined to sign Nature's Touch's letter of support, leading to the lease's collapse. (Da29, Compl. ¶ 15). However, license denials are commonplace and can stem from legitimate zoning, regulatory, or policy concerns. (1T:4:10-15). Plaintiff had no basis to suspect tortious interference until the May 17, 2024, article exposed Pellegrini's allegations that Bhalla acted to benefit Jaclyn Thompson in exchange for contract work. (Da74; Da29, Compl. ¶¶ 16-18). The article quoted Pellegrini's claim that Bhalla, during a January 14, 2022, meeting, admitted to quashing Nature's Touch's application to secure a deal with Fulop, a revelation that shocked Hoboken's community and prompted calls for investigation. (Da74). This disclosure transformed a routine administrative act into an alleged act of corruption, giving rise to Plaintiff's claim.

Defendants' assertion that the claim accrued in January 2022 misreads the discovery rule. (Db9-12). The mere economic loss from the lease's failure was not actionable absent knowledge of Bhalla's alleged tortious motive. Freeman v. State, 347 N.J. Super. 11, 22 (App. Div. 2002)(discovery does not require knowledge of a legal injury). In Lamb, the Supreme Court tolled accrual until plaintiffs learned the full scope of a landfill's harm, even though they experienced earlier symptoms. Lamb, 111 N.J. at 149. Similarly, Plaintiff's claim accrued when it uncovered the alleged wrongful motive, not when it first suffered financial loss.

Defendants' reliance on Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123 (2017), is misplaced. (Db17-19). In Ben Elazar, the claim accrued when plaintiffs learned a public entity contributed to contamination, not when they first noticed health issues. Id. at 141. Here, Plaintiff knew Bhalla was involved in the denial but had no reason to suspect his actions were tortious until May 2024. The trial court's finding that "the mere fact that the license was denied did not in and of itself give rise to a lawsuit" is unassailable. (1T:21:3-5).

The TCA's purpose—to enable public entities to investigate and settle claims—was fully served here. Velez v. City of Jersey City, 180 N.J. 284, 290 (2004). Plaintiff's prompt filing on August 5, 2024, gave Defendants ample time to investigate, and dismissing the claim would unfairly shield alleged misconduct. The trial court's ruling ensures justice while respecting the TCA's framework.

B. The Trial Court Properly Applied *Beauchamp v. Amedio* and Related Precedent to Toll the Notice Period. (1T20:8-25)

The trial court's reliance on Beauchamp v. Amedio was appropriate, anchoring its discovery rule analysis in settled precedent. (1T:20:8-16). Beauchamp establishes a three-step inquiry for TCA notice compliance: (1) determine the claim's accrual date; (2) assess whether notice was filed within 90 days; and (3) if not, evaluate extraordinary circumstances for late filing. 164

N.J. at 118-19. The discovery rule tolls accrual when a plaintiff is unaware of the injury or the responsible party's wrongful act. Id. at 117.

Here, the trial court found that Plaintiff's claim accrued on May 17, 2024, when it learned of Bhalla's alleged scheme through the *TAPinto Hoboken* article. (1T:21:3-10). Plaintiff filed its notice on August 5, 2024, within 80 days, satisfying N.J.S.A. 59:8-8. (Da36). The court correctly concluded that no motion for late filing was needed, as the notice was timely. (1T:21:11-14).

Defendants argue that Beauchamp is distinguishable because it addressed confusion over an injury's permanency, not a known actor's motive. (Db13-16). This narrow reading ignores Beauchamp's broader principle that accrual is delayed until the plaintiff has sufficient knowledge to assert a claim. 164 N.J. at 117. The trial court's finding that Plaintiff lacked knowledge of Bhalla's alleged unlawful act until May 2024 aligns with this principle. (1T:21:3-10). In Lamb v. Global Landfill Reclaiming, supra, the Court applied the discovery rule to toll accrual until plaintiffs discovered the landfill's role in their injuries, even though they knew of earlier harm. 111 N.J. at 149. Similarly, Plaintiff's claim accrued when it uncovered Bhalla's alleged motive, not when it suffered economic loss.

Defendants' citation to employment discrimination cases, such as Roa v. Roa, 200 N.J. 555 (2008), is unpersuasive. (Db15). In Roa, the plaintiff's

wrongful termination claim accrued upon termination, a discrete act inherently actionable. Id. at 561. Here, the license denial was not inherently tortious; the tort arose from Bhalla's alleged corrupt motive, unknown until May 2024. The trial court's application of Beauchamp was thus correct.

Moreover, the trial court's ruling advances the TCA's equitable goals. Dismissing Plaintiff's claim would reward Defendants' alleged secrecy, undermining the balance between public entity protection and claimant rights. Velez, 180 N.J. at 290. The court's decision ensures that meritorious claims proceed, consistent with New Jersey's commitment to justice.

C. Plaintiff's Reliance on *Ben Elazar v. Macrietta Cleaners, Inc.* was Apt and Reinforces the Discovery Rule's Application. (1T:4:25-5:5)

Plaintiff's reference to Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123 (2017), in opposing Defendants' motion was well-founded and supports the trial court's ruling. (1T:4:25-5:5). In Ben Elazar, the Supreme Court held that the plaintiffs' claim against a public entity accrued when they learned the entity contributed to toxic contamination, not when they first experienced symptoms. Id. at 141. The Court emphasized that the TCA's "exceedingly short" 90-day notice period is triggered only when a plaintiff knows or should know of a public entity's role. Id.

Here, Plaintiff knew in January 2022 that Bhalla declined to sign the letter but had no basis to suspect tortious interference until the May 17, 2024, article revealed

Pellegrini's allegations. (Da74; 1T:21:3-10). Pellegrini, a former Cannabis Review Board member, alleged that Bhalla admitted to quashing Nature's Touch's application to secure a deal for Thompson, a claim that sparked public outrage and demands for investigation. (Da74). Like the plaintiffs in Ben Elazar, Plaintiff's claim accrued when it discovered the public actor's alleged wrongful conduct, not when it first incurred loss.

Defendants' attempt to distinguish Ben Elazar by arguing that Bhalla was a "known" actor is unavailing. (Db17-19). The critical issue is not Bhalla's identity but the tortious nature of his action, which was concealed until May 2024. The trial court's implicit reliance on Ben Elazar's reasoning was sound, as Plaintiff acted promptly upon discovery, filing its notice within 80 days. (Da36).

D. No Motion for Late Notice Was Required Because the Notice Was Timely, and Premature Filing Does Not Bar Relief. (1T:19:24-21:14)

The trial court correctly held that Plaintiff was not required to file a motion for leave to file a late Notice of Tort Claim under N.J.S.A. 59:8-9, as the notice was timely. (1T:21:11-14). N.J.S.A. 59:8-9 permits late filings within one year of accrual under "extraordinary circumstances," but no motion was necessary here. O'Donnell v. N.J. Tpk. Auth., 236 N.J. 335, 346 (2010).

Defendants' reliance on McDade v. Siazon, 208 N.J. 463 (2011), is inapposite. (Db20-24). In McDade, the plaintiff failed to seek leave to file a late

notice after learning of a new responsible party outside the 90-day period, and lacked diligence in identifying the entity. Id. at 479-80. Here, Plaintiff filed its notice within 80 days of discovering Bhalla's alleged motive, well within the 90-day window. (Da36). The trial court's finding that no motion was required was correct. (1T:21:11-14).

Additionally, the trial court properly addressed Plaintiff's premature filing of the lawsuit, slightly before the six-month waiting period under N.J.S.A. 59:8-8. (1T:21:15-22:12). Premature filing is not a bar to recovery, and dismissal without prejudice is an appropriate remedy. Ezzi v. DeLaurentis, 172 N.J. Super. 592, 597 (Law Div. 1988). In Reale v. Township of Wayne, 132 N.J. Super. 100, 111 (Law Div. 1975), and Guerrero v. Newark, 216 N.J. Super. 66, 74-75 (App. Div. 1987), courts permitted premature suits to proceed where the public entity had sufficient investigation time. In Margolis v. City of Elizabeth, 332 N.J. Super. 352, 357 (App. Div. 2000), the court upheld a similar ruling, emphasizing judicial efficiency. Here, nearly six months had elapsed by the trial court's ruling, rendering dismissal unnecessary. (1T:22:5-10). The trial court's decision was both equitable and legally sound.

POINT II

THE TRIAL COURT CORRECTLY FOUND THAT PLAINTIFF STATED A CLAIM FOR TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE. (1T:22:26-24:25)

The trial court's denial of Defendants' motion to dismiss under R. 4:6-2(e) was sound, as Plaintiff's complaint robustly alleges tortious interference with prospective economic advantage. (1T:22:26-24:25). On a motion to dismiss, the court assesses the complaint's legal sufficiency, accepting all allegations as true and granting every reasonable inference to the plaintiff. Printing Mart-Morristown v. Sharp Elecs., 116 N.J. 739, 746 (1989); Reider v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). Dismissal is warranted only if no basis for relief exists and discovery would not provide one. Warren Cnty. v. State, 409 N.J. Super. 495, 503 (App. Div. 2009).

To state a claim for tortious interference, a plaintiff must allege: (1) a reasonable expectation of economic advantage; (2) intentional and malicious interference; (3) a reasonable probability that the plaintiff would have received the anticipated benefit absent the interference; and (4) resulting damages. Printing Mart-Morristown, 116 N.J. at 751-52 (citing Harris v. Perl, 41 N.J. 455, 462 (1964); Louis Kamm, Inc. v. Fink, 113 N.J.L. 582, 588 (1934); Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185-86 (App. Div. 1978)).

Defendants' attempt to dismiss this claim as speculative or insufficiently pleaded is meritless, as the complaint robustly satisfies each element, warranting affirmance.

A. Plaintiff Alleged a Reasonable Expectation of Economic Advantage. (1T:23:14-19)

The trial court correctly found that Plaintiff had a reasonable expectation of economic advantage through its proposed lease with Nature's Touch. (1T:23:14-19). A plaintiff need not demonstrate a binding contract; rather, a "reasonable probability" of economic benefit suffices. Printing Mart-Morristown, 116 N.J. at 751 (citing Harris v. Perl, 41 N.J. at 462). Here, the complaint alleges a detailed lease proposal, executed on December 28, 2021, promising $102,000.00 in annual rent, 3% annual increases, a four-month security deposit, and 5% of Nature's Touch's gross sales. (Da28, Compl. ¶¶10-11). This agreement, coupled with the Hoboken Cannabis Review Board's unanimous approval of Nature's Touch's application on January 7, 2022, created a strong expectation of economic gain. (Da28, Compl. ¶14).

The proposed lease's non-binding nature does not diminish this expectation, as New Jersey law recognizes prospective economic relationships as protected interests. Leslie Blau Co., 157 N.J. Super. at 185. In MacDougall v. Weichert, 144 N.J. 380, 398 (1996), the Supreme Court upheld a tortious

interference claim based on a prospective real estate deal, emphasizing that the plaintiff's reasonable anticipation of profit was sufficient. Similarly, Plaintiff's expectation was grounded in a concrete proposal and the Board's endorsement, positioning Plaintiff to benefit from Hoboken's emerging cannabis market.

Defendants' argument that Nature's Touch's license approval was speculative ignores the complaint's allegations, which must be accepted as true. (Db6-7; 1T:6:1-7). The Board's approval signaled a high likelihood of state licensing, as Hoboken's local endorsement was a critical step. (Da28, Compl. ¶14). The trial court aptly noted that the application specified the 1014 Washington Street location, reinforcing the probability that Nature's Touch would have operated there if not for Bhalla's interference. (1T:23:20-24:10). Dismissing this claim at the pleading stage would contravene New Jersey's policy of allowing meritorious claims to proceed to discovery. Banco Popular N. Am. v. Gandi, 184 N.J. 161, 165 (2005).

B. Defendants' Alleged Conduct Constitutes Intentional and Malicious Interference. (1T:24:11-15)

The complaint's allegations of intentional and malicious interference by Mayor Bhalla are compelling and sufficient to survive dismissal. (1T:24:11-15). Malice in this context does not require personal animus but rather intentional conduct "without justification or excuse." Printing Mart-Morristown, 116 N.J.

at 751 (citing Louis Kamm, Inc., 113 N.J.L. at 588). The complaint alleges that Bhalla, acting in his official capacity, quashed Nature's Touch's license to favor Jaclyn Thompson, wife of Jersey City Mayor Steven Fulop, in exchange for contract work for Bhalla's law firm. (Da29, Compl. ¶¶16-18). These actions, if true, represent a flagrant abuse of power, devoid of any legitimate public purpose.

In MacDougall v. Weichert, the Supreme Court held that malice can be inferred from conduct that intentionally disrupts a prospective economic relationship for personal gain. MacDougall v. Weichert, 144 N.J. 380, 404 (1996). Here, Bhalla's alleged scheme to secure personal benefits through a corrupt deal with Fulop, as detailed in Pellegrini's complaint and reported by *TAPinto Hoboken*, constitutes precisely such conduct. (Da74; Da29, Compl. ¶¶ 16-18). The article quoted Pellegrini's claim that Bhalla admitted this arrangement during a January 14, 2022, meeting, a revelation that shocked Hoboken's community and prompted calls for investigation. (Da74). The trial court correctly found that these allegations establish intentional interference, as Bhalla's actions were allegedly driven by self-interest, not public welfare. (1T:24:11-15).

Defendants' contention that no evidence supports Bhalla's intent is premature (Db7-8). On a motion to dismiss, the court does not weigh evidence but accepts the plaintiff's allegations as true. Printing Mart-Morristown, 116 N.J. at 746. The complaint's specificity—detailing the date, attendees, and content of Bhalla's alleged admissions—more than satisfies the pleading standard. Banco Popular, 184 N.J. at 165. Moreover, Defendants' attempt to discredit Pellegrini, who has pleaded guilty to unrelated embezzlement charges, is irrelevant at this stage, as the trial court rightly noted that credibility is not considered on a motion to dismiss. (1T:24:16-24; Da144).

C. Plaintiff Sufficiently Alleged Causation and Damages. (1T:24:16-24:24)

The trial court properly found that Plaintiff alleged causation and damages, completing the tortious interference claim. (1T:24:16-24:24). A plaintiff must show a "reasonable probability" that, absent the interference, it would have realized the economic benefit, and that damages ensued. Printing Mart-Morristown, 116 N.J. at 752 (quoting Leslie Blau Co., supra, 157 N.J. Super. at 185-86). The Complaint alleges that Bhalla's refusal to sign the letter of support directly prevented Nature's Touch from obtaining a state license, causing it to abandon the lease. (Da29-30, Compl. ¶¶15, 24). As a result, Plaintiff's property remained vacant for 15 months, costing $137,020.00 in lost rent and 50% of the assessed taxes. (Da30, Compl. ¶24).

The trial court emphasized that Nature's Touch's application specified the 1014 Washington Street location, making it highly probable that the dispensary would have operated there if the license had been granted. (1T:23:20-24:10). Hoboken's zoning regulations required the dispensary to open at the designated site, further supporting causation. (Da28; 1T:6:8-14). In Leslie Blau Co., supra, the court upheld a tortious interference claim where the defendant's actions disrupted a prospective lease, causing financial loss. 157 N.J. Super. at 186. Similarly, Bhalla's alleged interference derailed Plaintiff's lease, inflicting tangible harm.

Defendants' argument that the license approval process was too speculative to establish causation is baseless. (Db6-7). The Cannabis Review Board's unanimous approval was a significant milestone, and Bhalla's letter was a ministerial act typically issued absent compelling reasons. (Da28, Compl. ¶ 14; 1T:6:1-7). The Complaint alleges that Bhalla's refusal was not based on regulatory concerns but on a corrupt deal, removing any legitimate barrier to approval. (Da29, Compl. ¶¶16-18). At the pleading stage, these allegations suffice to establish a reasonable probability of success. Printing Mart-Morristown, 116 N.J. at 752.

The damages alleged—$137,020.00 in lost rent and tax contributions—are concrete and directly tied to the interference. (Da30, Compl. ¶24). Plaintiff's 15-month vacancy in a prime Hoboken location underscores the severity of the harm,

particularly in a burgeoning cannabis market. Defendants' claim that damages are speculative ignores the complaint's detailed loss calculations, which are more than adequate to survive dismissal. Banco Popular, 184 N.J. at 165.

The trial court's ruling advances New Jersey's policy of protecting businesses from unlawful interference, ensuring that public officials cannot exploit their authority to harm private enterprises. MacDougall, 144 N.J. at 384. Affirming this decision allows Plaintiff to pursue discovery, where the full extent of Defendants' alleged misconduct can be uncovered.

POINT III

THE TRIAL COURT'S DISCRETIONARY ORDER REQUIRING DOCUMENT PRODUCTION WAS APPROPRIATE AND DOES NOT JUSTIFY DISMISSAL. (1T:22:26-24:25)

The trial court's order requiring Plaintiff to produce documents within seven days was a prudent exercise of discretion and does not support dismissal. (1T:25:7-26:57; Da10). Defendants requested the lease proposal, agreement with Nature's Touch, and Notice of Tort Claim, which Plaintiff had not yet provided despite demands. (Da71; 1T:25:7-12). The trial court correctly held that dismissal under R. 4:18-2 or R. 4:23-5(b) was unwarranted absent a violated discovery order, opting instead for a practical solution to ensure fairness. (1T:25:15-39; Da10).

R. 4:18-2 permits document requests but does not mandate dismissal for non-compliance without a court order. Similarly, R. 4:23-5(b) authorizes sanctions, including dismissal, only for failure to comply with a discovery order. Abtrax Pharms., Inc. v. Elkins-Swyers, 159 N.J. 580, 591 (1999) (dismissal is a "last resort" for discovery violations). Here, no discovery order existed when Defendants moved, rendering their request for dismissal premature. (1T:25:15-25). The trial court's order to produce documents within seven days addressed Defendants' concerns while preserving Plaintiff's right to pursue its claim. (Da10).

Defendants' argument that Plaintiff's failure to produce documents justifies dismissal is baseless. (Db12-13). The requested documents—the lease proposal, agreement, and notice—are referenced in the complaint and readily producible. (Da28-30, Compl. ¶¶10, 25; Da34, Da36). Plaintiff's counsel acknowledged the oversight and committed to prompt compliance, a stance the court accepted. (1T:11:1-11). In Abtrax Pharms., the Supreme Court upheld a similar approach, affirming a refusal to dismiss where the plaintiff agreed to comply with discovery requests. 159 N.J. at 592. Here, the plaintiff's trial court's order ensures Defendants receive compliance the documents while avoiding without undue prejudice to Plaintiff.

Moreover, the trial court's ruling aligns with judicial economy and fairness. Allowing a meritorious claim to proceed despite a minor discovery oversight delay ensures that disputes are resolved on their merits, not procedural technicalities. Velez, supra, 180 N.J. at 290. The court's directive also protects Defendants' ability to defend the case, as the documents may inform future motions, a possibility the court expressly acknowledged. (1T:25:25-26:2).

Defendants' appeal on this ground is a transparent attempt to avoid substantive review of their alleged misconduct to dodge the issue at hand. The trial court's balanced approach—ordering compliance while denying dismissal—merits affirmance, ensuring that justice prevails over procedural gamesmanship.

CONCLUSION

For the reasons set forth above, the trial court's January 31, 2025, Order denying Defendants' motion to dismiss is a sound application of law and must be affirmed.

Respectfully submitted,

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PAL PARK BOYS, LLC, Plaintiff, vs. CITY OF HOBOKEN, RAVINDER SINGH BHALLA, and JOHN DOES 1-5, Defendants,	APPELLATE DIVISION OF THE SUPERIOR COURT OF NEW JERSEY DOCKET NO. A-001763-24 Team 02 **Civil Action** DOCKET NO. HUD-L-2720-24 Sat Below: Hon. Jane L. Weiner, J.S.C.

DEFENDANTS-APPELLANTS' REPLY BRIEF

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PRELIMINARY STATEMENT

Defendants-Appellants, the City of Hoboken (the "City") and Ravinder Bhalla (the "Mayor") (collectively, "Defendants), submit this Reply in response to Plaintiff-Respondent, Pal Park Boys, LLC ("Plaintiff")'s, Opposition Brief. To that end, by way of clarification, the only issue/question presently on appeal is whether the Trial Court erred in determining that the discovery rule tolled the time to file a Notice of Tort Claim when Plaintiff knew, as of January 2022, that it suffered an injury and who was purportedly responsible for such injury. Defendants respectfully submit the answer to this narrow issue/question is yes.

Plaintiff admits and concedes that, as of January 10, 2022, it knew its prospective tenant, Nature's Touch, LLC ("Nature's Touch"), would not be entering into a lease for its premises because: (1) the Mayor disregarded the City of Hoboken Cannabis Board's (the "Board") endorsement of Nature's Touch's application for a cannabis dispensary license, and did not issue a letter of support with respect to same; (2) as a result of the Mayor's failure to issue the letter of support, Nature's Touch would not be obtaining a cannabis dispensary license from the State; and therefore, (3) Nature's Touch would not be opening a cannabis dispensary at Plaintiff's premises.

Thus, as of January 10, 2022, Plaintiff knew: (a) it suffered an injury; to wit: the economic loss from not entering into a lease with Nature's Touch for

the purpose of operating a cannabis dispensary in the City; and (b) that the Mayor, and by extension the City, was responsible for the purported injury. Therefore, Plaintiff's claim against Defendants accrued on January 10, 2022, thereby triggering the ninety (90) day period in which Plaintiff was required to file a Notice of Tort Claim with Defendants pursuant to the New Jersey Torts Claim Act, which period had long-expired before Plaintiff belatedly sought to pursue its claim against Defendants.

Plaintiff's desperate attempt to sidestep these unavoidable, conceded facts by arguing it was unilaterally permitted to rely upon the "discovery rule" to arbitrarily designate May 17, 2024, the date it purportedly first learned of the purported *reason* for the Mayor's failure to issue a letter of support, as the triggering date to start the ninety (90) day period, is not supported in law and fails it its entirety. On these facts, the discovery rule is not applicable, as no later known third party allegedly caused Plaintiff's injury. Thus, no tolling of the time for Plaintiff to file its Notice of Tort Claim applies. Since the only party who allegedly caused Plaintiff's injury was the Mayor, and by extension the City, Plaintiff's claim accrued on January 10, 2022. Consequently, the Notice of Tort Claim filed by Plaintiff on August 5, 2024, without leave of Court, was filed out-of-time and is, therefore, null and void *ab initio*.

Notably, Plaintiff's brief is completely devoid of any argument addressing the salient fact that as of January 2022, it knew it suffered an injury and who was responsible for said injury. There is no unknown third party here. To the contrary, it is undisputed that Plaintiff knew in January 2022 the Mayor (and by extension the City), not some unknown third party, was potentially responsible for its injury. Accordingly, the Trial Court erred in denying Defendants' Motion to Dismiss and in failing to forever bar Plaintiff from commencing suit against Defendants. Thus, Defendants' appeal should be granted and Plaintiff's complaint should be dismissed with prejudice.

Moreover, although Defendants' motion for leave to appeal was granted strictly to address the Trial Court's failure to dismiss Plaintiff's Complaint due to its failure to comply with the notice requirements Tort Claim Act (a decision akin to the granting of a motion for leave to file a late Notice of Claim which is appealable as of right pursuant to R. 2:2-3(b)(7)), it should be noted that Defendants wholly disagree with Plaintiff's contention that it has stated a claim upon which relief may be granted. Plaintiff's cause of action for tortious interference with prospective economic advantage fails as a matter of law and should have, likewise, served as a basis for dismissal of Plaintiff's complaint with prejudice by the trial court separate and apart from Plaintiff's failure to timely comply with the New Jersey Tort Claims Act.

LEGAL ARGUMENT

I. PLAINTIFF MISCONSTRUES WHEN A CAUSE OF ACTION ACCRUES UNDER THE LAW OF THIS STATE

Plaintiff's attempt to invoke the discovery rule to justify its untimely filing of a Notice of Tort Claim in August 2024, without leave of Court, must be wholly rejected, when Plaintiff concedes it knew it suffered an injury AND who was allegedly responsible for such injury as of January 2022.

Here, Plaintiff acknowledges "[t]he discovery rule . . . tolls accrual [of a claim] until plaintiff knows or should know of the injury and the responsible party's role." (Pb7)[1], citing Lamb v. Global Landfill Reclaiming, 111 NJ. 134, 144 (1988)). Stated another way, the discovery rule tolls the accrual of a claim when "the injured party **either does not know of his injury** or **does not know that a third party is responsible for the injury**." Ben Elazar v. Macrietta Cleaners, Inc. 230 N.J. 123, 134 (2017). Plaintiff fails to establish either prong to satisfy application of the discovery rule. For instance, Plaintiff ADMITS that in January 2022, it knew "Bhalla declined to sign Nature's Touch's letter of support, leading the lease's collapse." (Pb8). Thus, Plaintiff knew the date it suffered an injury and cannot establish the first prong of the discovery rule. Further, Plaintiff knew it's injury was caused by the Mayor declining to sign the

[1] References to Plaintiff-Respondent's Brief are referred to as Pb followed by the page number.

letter of support and cannot establish the second prong of the discovery rule. Accordingly, Plaintiff's claim against Defendants accrued in January 2022 and Plaintiff was required by law to file a Notice of Tort Claim within ninety (90) days from the accrual of its injury. The Trial Court, therefore, erred in failing to dismiss Plaintiff's Complaint with prejudice pursuant to Plaintiff's untimely filing of its Notice of Tort Claim.

A. Plaintiff Cannot Show It Lacked Sufficient Knowledge About Having An Actionable Claim Against Defendants.

Plaintiff's assertion that "license denials are commonplace and can stem from legitimate zoning, regulatory, or policy concerns," and, as a consequence, it "had no basis to suspect tortious interference until the May 17, 2024 article . . .", is wholly unpersuasive to survive dismissal of its Complaint. (Pb 8). The decisions of municipalities and their agents are routinely challenged by those who perceive themselves to be aggrieved by a decision adverse to their interests. Indeed, our New Jersey court rules provide for an efficient method to bring such challenge by way of Action In Lieu of Prerogative Writs. See, N.J. Court Rules, 4:69.1 et seq.

Moreover, contrary to its assertion that its claim did not accrue until it heard of Pellegrini's spurious allegations after reading the May 17, 2024 article, Plaintiff acknowledged it knew, in January 2022, that the Board expressed

unanimous approval of Nature's Touch's application[2] but the Mayor "abruptly" rejected said application despite such Board approval, thereby "derailing the licensing process." (Pb 3). As such, even though Plaintiff may not have been in possession of evidence to "prove" a claim against the Defendants, Plaintiff had sufficient reason to recognize a potential claim may exist, which is all that is necessary for the claim to accrue and to trigger the running of the ninety (90) day period to file a Notice of Tort Claim.

In fact, Plaintiff concedes, "discovery does not require knowledge of a legal injury." Id., citing Freeman v. State, 347 N.J.Super. 11, 22 (App. Div. 2002) (Pb8). Indeed, the Freeman case, which Plaintiff inexplicably relies upon, highlights the flaws in both the trial court's and Plaintiff's reasoning. In Freeman, the plaintiffs were stopped for a minor traffic violation. A vehicle search revealed drugs and resulted in criminal convictions, which convictions were later reversed on appeal and the evidence was suppressed. Plaintiffs then sued various defendant officials pursuant to 42 U.S.C.S. §1983, asserting a deprivation of constitutional rights. The trial court dismissed plaintiffs' case,

[2]To clarify, the Board was an "advisory committee to the City of Hoboken" (Hoboken Municipal Code at § 36-1), which reviewed Nature's Touch's application and provided its endorsement. The Board was not authorized, however, to "approve" the Nature's Touch's application.

determining that the action was filed after the expiration of the two year statute of limitation.

Plaintiffs appealed the trial court's dismissal, claiming the accrual of their cause of action should have been tolled until they were released from prison. The Appellate Division disagreed and affirmed the trial court's dismissal. In so doing, the Appellate Division noted that "a claim under 42 U.S.C.S. §1983 accrues when the plaintiff 'knows or has reason to know of the injury which is the basis of the action.'" Freeman, 347 N.J. Super. at 22, citing Singleton v. City of New York, 632 F.2d 185, 191 (2d Cir. 1980). Accordingly, "where a claimant is aware that harm has been done, ignorance of his legal rights does not toll the statute of limitations." Id., citing United States v. Kubrick, 444 U.S. 111, 123 (1979). Moreover, "[i]t is not necessary that a claimant be aware of all the evidence that will be ultimately relied upon before the statute begins to run." Id. citing Baker v. Bd. of Regents, 991 F.2d 628, 632 (10th Cir. 1993).

The same reasoning set forth in Freeman regarding when a claim accrues triggering the running of a statute of limitations applies here, with equal force, to determine when a claim accrues for the purpose of the running of the ninety (90) day period to file a Notice of Tort Claim pursuant to N.J.S.A. §59:8-8. The requirement to file a Notice of Tort Claim does not hinge on whether a plaintiff can prove its claim at the time the notice is filed. Rather, a plaintiff must file

the notice of claim when it knows, or has reason to know, a claim exists or may exist against a public entity and/or employee.

Indeed, the purpose requiring the filing of a Notice of Tort Claim is to allow the public entity to review and investigate a claim, afford it the opportunity to settle the claim, allow it to correct the conditions or practices that gave rise to the claim, and give it advance notice of its potential liability. Velez v. City of Jersey City, 180 N.J. 284, 290, 850 A.2d 1238 (2004). Had Plaintiff filed a Notice of Tort Claim within 90 days of January 10, 2022, as it was required to do pursuant to N.J.S.A. §59:8-8, Pellegrini would likely have had far less leeway to cast his wild and false aspersions, which were only asserted **after** it was discovered by independent, outside counsel that Pellegrini committed serious acts of misconduct by embezzling from the City – a crime as to which Pellegrini has pleaded guilty -- and which resulted in Pellegrini's resignation. Plaintiff also, in all likelihood, would have recognized the falsity and incredibility of Pellegrini's allegations before commencing its lawsuit.

Additionally, it is without dispute that as of January 10, 2022, Plaintiff knew it suffered an injury; to wit: the lost economic advantage from a lease with Nature's Touch. It is further without dispute that as of the same date, Plaintiff knew the Mayor, not some third-party, was responsible for its alleged injury by virtue of his refusing to provide a letter of support for Nature's Touch's

application despite the Board's presumed support thereof. Thus, Plaintiff's cause of action accrued on January 10, 2022, and a Notice of Tort Claim was required to be filed within 90 days of such accrual.

B. Plaintiff's Reliance Upon *Lamb v. Global Landfill Reclaiming* Is Inapposite

Plaintiff inaptly relies upon Lamb, supra, 111 N.J. 134, for the proposition that Plaintiff's claim accrued when "it uncovered the alleged wrongful motive, not when it first suffered financial loss." (Pb 8). Yet, Plaintiff misconstrues the facts and holding in Lamb.

In Lamb, the plaintiff claimants were residents of an apartment complex which was located adjacent to a land fill and dumping site used by public and private entities. In March of 1986, aforesaid residents discovered that many tenants were complaining of an array of unexplained medical conditions. Noting the proximity of the landfill to their residences, plaintiffs began wondering whether the unexplained illnesses could be linked to pollutants at the site and submitted soil samples to a testing company for analysis, the preliminary results of which indicated that there was a hazardous material in the landfill. Despite assurances by township officials and the New Jersey Department of Environmental Protection (DEP) that the landfill did not pose a health hazard, plaintiffs retained an attorney who undertook an investigation to determine (1) whether hazardous waste was, indeed, present at the site, and, if so, (2) the

identities of those responsible for creating the toxic conditions at the landfill. Lamb, 111 N.J. at 138-139.

In October 1986, more than ninety (90) days but less than one (1) year after plaintiffs received the preliminary tests results pertaining to the site, plaintiffs filed a motion for leave to file a late Notice of Tort Claim against various public entities in which they submitted an attorney affidavit describing (1) the circumstances leading to contamination at the site, (2) listing the various maladies affecting plaintiffs; and (3) stating that "plaintiffs were unable to comply with the Notice of Tort Claim requirement within the ninety day period because of the severity of their injuries and inability to investigate the circumstances surrounding the complained of occurrence." (Id. at 141). The trial court granted plaintiffs' motion to file a late Notice of Tort Claim. The Appellate Division reversed on the basis that the reasons articulated in plaintiffs' counsel's affidavits "have not been here shown sufficient to relax the statutory requirement of 90 days notice to the public entities." Id. at 142.

The Supreme Court upheld the trial court's determination and rejected the Appellate Division's analysis. In so doing, the Supreme Court observed that "in applying the 'discovery rule' *in the toxic tort context*, we recognize the difficulties in *diagnosing* injuries caused by toxic substances, as well as in *discovering the cause of such injuries*." Id. (Emphasis added). As such, the

Supreme Court observed that the "critical question . . is when [plaintiff] discovered or should have discovered, by exercise of reasonable diligence and intelligence, that the physical condition of which he complains was causally related to his exposure to chemicals at [the toxic-waste disposal site]. Id.

None of the underlying circumstances which warranted application of the discovery rule in Lamb are present here. To the contrary, Plaintiff knew (1) it suffered an injury, to wit, financial loss as a result of the lost lease with Nature's Touch; and (2) who was responsible (i.e. who "caused") the injury, to wit, the Mayor by way of his decision not to write a letter in support of Nature's Touch's application for a cannabis dispensary license. Thus, Lamb is simply of no help to Plaintiff.

C. Plaintiff's Reliance On *Ben Elazar v. Macrietta Cleaners Inc.* is Likewise Misplaced.

Plaintiff's reliance on Ben Elazar v. Macrietta Cleaners, Inc., 230 N.J. 123, 134 (2017) is similarly misplaced. (Pb11). In Ben Elazar, and wholly distinct from the scenario presently before the Court, the plaintiff did not know or have reason to know that some of the contaminants that may have caused plaintiff's injuries were stored on township land. Thus, plaintiff had no reason to suspect, at the time the complaint was filed, that an unknown third party (the public defendant) might have been responsible for his injuries. Therefore, the discovery rule applied and the time to file a Notice of Claim was deemed tolled.

In contrast, here, Plaintiff knew of its injury and knew the Mayor, not some unknown third party public defendant, was responsible for not supporting Nature's Touch's application to the State. Accordingly, and since the Mayor was not an unknown third party, the reasoning set forth in Ben Elazar for applying the discovery rule is simply inapplicable in this case.

D. Plaintiff Improperly Failed To Seek Leave To File A Late Notice of Tort Claim.

Plaintiff's assertion that it was not required to seek leave to file a late Notice of Tort Claim under the rubric that its August 5, 2024 Notice of Tort Claim was timely is likewise unavailing. (Pb 12). Plaintiff fails to cite any authority that vests a claimant the right to unilaterally determine the discovery rule applies, and thereby shift the burden to the public entity to bring the issue to the attention of the Court by way of a Motion to Dismiss. Rather, as more fully set forth in Defendants' initial Brief (Db20), Plaintiff's procedural gamesmanship should not be countenanced by this Court.[3]

II. PLAINTIFF'S COMPLAINT FAILS TO STATE A CAUSE OF ACTION FOR TORTIOUS INTERFERENCE.

As noted, supra, the only issue presently on appeal is whether Plaintiff's complaint should be dismissed for failure to timely file a Notice of Tort Claim.

[3] Plaintiff's flouting of the requirements of the Torts Claim Act is underscored by Plaintiff's failure to wait the requisite six (6) month period to file this action as provided for by N.J.S.A. 59:8-8 after filing its (untimely) Notice of Tort Claim.

However, insofar as many of the same policy considerations applicable to the exception from the finality rule set forth in R. 2:2-3(b)(7), including permitting a public entity avoid the cost of defending an improperly filed action, are likewise applicable to the denial of a Motion to Dismiss for Failure to State a Cause of Action, Defendants will briefly respond to Plaintiff's contention that it stated a valid claim for tortious interference with prospective economic advantage. (Pb14). Plaintiff has not set forth a valid claim and the trial court's denial of Defendants' motion to dismiss for failure to state a cause of action was, likewise, erroneous.

To prove a claim of tortious interference with a prospective business relation, a plaintiff must establish it had a "reasonable expectation of economic advantage that was lost as a direct result of a defendant's malicious interference, and that it suffered losses thereby." Lamorte Burns & Co., Inc. v. Walters, 167 N.J. 285, 306-07 (2001) (citing Baldasarre v. Butler, 132 N.J. 278, 293 (1993)). Causation is demonstrated where there is "proof that if there had been no interference there was a reasonable probability that the victim of the interference would have received the anticipated economic benefit." Ideal Dairy Farms, Inc. v. Farmland Diary Farms, Inc., 282 N.J. Super. 140, 199 (App. Div.) *certif. denied*, 141 N.J. 99 (1995) (quoting Leslie Blau Co. v. Alfieri, 157 N.J. Super. 173, 185-86 (App. Div.) *certif. denied sub nom*, Leslie Blau Co. v. Reitman, 77

N.J. 510 (1978)). Here, Plaintiff fails to establish any of the requirements necessary to validly state such a claim as a matter of law.

First, Plaintiff has not established, nor can it establish, a reasonable expectation of any economic advantage existed from its dealings with Nature's Touch since Plaintiff *never* entered into a formal lease agreement with Nature's Touch. The December 28, 2021 "Proposal to Lease" referenced by Plaintiff (Da27 at ¶ 3), expressly sets forth such "proposal" was "**for discussion purposes only and does not constitute a binding lease agreement.**" (Da35) Further, Plaintiff admits it was wholly aware that Nature's Touch intended to lease the Property for the purpose of operating a cannabis dispensary but **did not have a license to operate such business when the Proposal to Lease was executed**. Da28 at ¶¶ 6 and 7. Thus, Plaintiff knew and/or should have known any lease agreement with Nature's Touch was **contingent** upon Nature's Touch receiving the requisite license to operate a cannabis dispensary at the Property, which was in no way guaranteed.

Second, Plaintiff knew or should have known obtaining such license required the following: (i) endorsement from the Board; (ii) approval from the Mayor; AND (iii) approval from the State. Accordingly, even if Plaintiff's allegations regarding the Mayor are true [which they are not], Plaintiff cannot establish it possessed a "reasonable expectation" of economic advantage since

obtaining the requisite endorsement, approvals and cannabis dispensary license **were never a certainty** when it executed the Proposal to Lease. As such, Plaintiff never suffered any actual harm by virtue of the Mayor's purported actions as there NEVER existed a binding lease agreement between Plaintiff and Nature's Touch and the proposed lease agreement was always contingent upon Nature's Touch obtaining the requisite license from the State. Further, there was never any certainty that the State would issue a license even if the Mayor approved Nature's Touch's application and the Mayor's alleged actions cannot be construed as an intentional, unjustified and inexcusable interference with Plaintiff's prospective business opportunities. Plaintiff's claim, therefore, fails as a matter of law and the Complaint should have been dismissed.

CONCLUSION

For the foregoing reasons, as well as for the reasons set forth in Defendants' initial Brief, the Trial Court's denying Defendants' Cross-Motion to Dismiss should be vacated and Plaintiff's action should be dismissed with prejudice.

Respectfully submitted,
/s/ Daniel Antonelli
Daniel Antonelli

Dated: June 26, 2025