EDWARD McNEILL, JR. Plaintiffs, vs. PORT AUTHORITY OF NY & NJ, GARDAWORLD, JOHN DOES 1-10, JANE DOES 1-10, XYZ ENTITIES (1-10), Said names being fictitious and used to designate fictitious persons or entities whose real identities are presently unknown Defendants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002698-24 ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY LAW DIVISION Sat Below: Hon. Joseph A. Turula, Presiding Judge of the Superior Court of New Jersey Law Division Docket No. HUD-L-1864-23

BRIEF OF PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

This appeal arises from two interlocutory Orders entered by the Law Division: (1) denying Plaintiff's Motion for Leave to File a Second Amended Complaint to substitute EWR Conrac, LLC and SIXT Rent A Car, LLC for fictitious defendants; and (2) denying Plaintiff's subsequent Motion for Reconsideration. These rulings were erroneous and contrary to the spirit and purpose of Rule 4:26-4, longstanding New Jersey precedent, and fundamental fairness.

Plaintiff, a shuttle driver, was injured on June 8, 2022, while working at Newark Liberty International Airport rental car return parking lot owned by the Port Authority of NY and NJ when a hydraulic barrier owned suddenly rose up, launching his vehicle upward and causing him to sustain injury. Plaintiff timely filed a Notice of Claim with the Port Authority of NY and NJ and later filed a Complaint naming fictitious defendants and describing them with specificity.

Despite diligent efforts to ascertain the proper identities, it was only after the statute of limitations expired that discovery revealed EWR Conrac and SIXT Rent A Car as the actual entities responsible for the premises in question. The Port Authority withheld this information despite being served with the initial Complaint and Notice of Claim and falsely certified under Rule 4:5-1 that all necessary parties had been joined.

The Court below denied Plaintiff's motion to amend yet later granted a co-defendant's motion to bring the same entities into the case via third-party complaint. This inconsistent treatment deprived Plaintiff of the right to pursue claims against the parties actually responsible for his injuries. Reversal is necessary to restore fairness, prevent prejudice, and uphold the remedial purpose of fictitious party practice under Rule 4:26-4.

Plaintiff reasserts all of the facts and arguments set forth in his previously filed motion for leave to file an interlocutory appeal of the lower Court's decision to deny Plaintiff's Motion for permission to substitute EWR Conrac and SIXT as Defendants in place of fictitiously named Defendants and motion for reconsideration of the lower court's denial of Plaintiff's motion. Plaintiff's motion for leave to file an interlocutory appeal and Plaintiff's motion to supplement the record have since been granted by the Appellate Division.

PROCEDURAL HISTORY

Plaintiff Edward McNeill, Jr. filed a Complaint in the Superior Court of New Jersey, Law Division, Hudson County on May 26, 2023 (Pa0050-Pa0066), arising from a work-related premises/motor vehicle accident that occurred on June 8, 2022, at Newark Liberty International Airport. The Complaint named the Port Authority of New York and New Jersey, GardaWorld Security Services, and other fictitious defendants whose identities were unknown at the time of filing. Id.

On June 6, 2023, Plaintiff filed a First Amended Complaint (Pa0070-Pa0084) identifying additional factual allegations, again using fictitious names to preserve claims against unidentified property owners and maintainers. Plaintiff's timely Notice of Claim had been served on the Port Authority following the incident (Pa0020-Pa0030). Co-Defendant Port Authority filed an Answer to Plaintiff's First Amended Complaint on September 8, 2023 (Pa086-Pa097). The law firm of Kirmser Lamastra filed a Substitution of Attorney on June 13, 2024 (Pa100-Pa101, Pa234). Co-Defendant United d/b/a GardaWorld filed an Answer to Plaintiff's First Amended Complaint on August 4, 2023 (Pa178-Pa185) Following the expiration of the statute of limitations, counsel for the Port Authority for the first time disclosed that the property in question was leased and/or maintained by EWR Conrac, LLC and operated by SIXT Rent A Car, LLC (Pa101-Pa113). Prior to that disclosure, Plaintiff was unaware of the true identity of the parties responsible for the hydraulic

gate mechanism and had relied on the Port Authority's Rule 4:5-1(b)(2) Certification stating that all necessary parties had been joined (Pa222-Pa230).

On January 14, 2025, Plaintiff filed a Motion for Leave to File a Second Amended Complaint to substitute EWR Conrac and SIXT for fictitious defendants (Pa143-Pa216). On January 31, 2025, the trial court entered an Order denying the motion in part, concluding that Plaintiff had not sufficiently identified the fictitious parties in the original pleading (Pa141). Plaintiff filed a Motion for Reconsideration on February 20, 2025 (Pa003-Pa134), which was denied by Order dated March 14, 2025 (Pa001).

After the filing of co-defendant United's Answer, on March 18, 2025 Co-Defendant United American filed a motion to assert a third-party complaint against EWR Conrac and SIXT Rent A Car (Pa-242-Pa279).

On March 26, 2025 Plaintiff filed a motion to extend discovery and to adjourn the May 15, 2025 arbitration date. Pa321-Pa404). The Court denied Plaintiff's on April 11, 2025 (Pa-316-Pa317).

On June 4, 2025 Co-Defendant GardaWorld filed an answer (Pa304-Pa330).

Plaintiff filed a Motion for Leave to File an Interlocutory Appeal on April 3, 2025, which the Appellate Division granted by Order dated May 29, 2025 (Pa285-Pa286). The Appellate Division also granted Plaintiff's subsequent motions to

supplement the record and to stay all trial court proceedings, including arbitration (Pa318, Pa319-Pa320). This appeal follows.

STATEMENT OF FACTS

This case arises from a work-related premises/motor vehicle accident that occurred on June 8, 2022, at the QTA Lot of Newark Liberty International Airport (Pa020-Pa030). Plaintiff Edward McNeill, Jr. was operating a vehicle in the course of his employment with EDS Service Solutions when he drove over a hydraulic gate embedded in the ground. The gate suddenly and violently rose, propelling the vehicle upward and causing Plaintiff to strike his head against the interior roof (Pa020-Pa 030). As a result, Plaintiff sustained injuries to his head, neck, and back. Id.

Plaintiff filed a timely Notice of Claim against the Port Authority of NY & NJ Id. followed by a civil Complaint that included fictitious defendants (Pa050-Pa084). The Port Authority filed an Answer including a R. 4:5-1(b)(2) certification that no additional parties were known to exist (Pa222-Pa229).

After filing its Answer on September 8, 2023, on June 14, 2024 the Port Authority Law Department's Counsel Andres Castillo substituted out of the case. (Pa100) Its in-house counsel was replaced by defense counsel Timothy Malacrida an attorney employed by ACE American Insurance Company, a Chubb Company, the insurer for EWR CONRAC LLC (Pa100, Pa234).

However, on August 12, 2024 (Pa102-Pa113) Port Authority later disclosed in Answers to Interrogatories by new counsel, Kirmser Cunningham and Skinner through its associate Timothy Malacrida, that the subject QTA Lot was actually

controlled or operated by EWR CONRAC LLC. and/or SIXT (Pa102-113, Pa107, Pa110).

Plaintiff moved to amend the complaint to substitute CONRAC LLC and SIXT for the fictitious parties previously plead (Pa143-Pa216), but the motion was denied by the trial court, (Pa141-Pa142). The trial court denied the part of the motion to substitute EWR CONRAC LLC and SIXT in place of fictitious defendants and granted part of the Plaintiff's motion to correct the name of Defendant Gardaworld. (Pa141-Pa142).

Counsel for Port Authority Timothy Malacrida who previously disclosed this information on behalf of the Port Authority opposed the part of the Motion to substitute EWR CONRAC LLC and SIXT in place of fictitious defendants. (Pa217-Pa221).

The Court denied the part of the motion to substitute EWR CONRAC LLC and SIXT in place of fictitious defendants and granted part of the Plaintiff's motion to correct the name of Defendant Gardaworld, (Pa141-Pa142).

Plaintiff filed a Motion for Reconsideration of Order which denied him the right to file an Amended Complaint substituting EWR Conrac and SIXT for fictitious Defendants XYZ CO. (Pa003-Pa134).

Again, the Port Authority opposed the motion to bring in the Chubb insured lessee EWR CONRAC LLC (Pa135-Pa139).

Plaintiff's counsel called the Court requesting permission to submit a sur-reply to the Opposition. (Pa235-Pa237) His request was denied, but the court's chambers advised that such points could be addressed during oral argument. Id. Days before the motion's return, Plaintiff's counsel called chambers and requested oral argument. Id. His request was also denied. Id.

On March 14, the Court denied Plaintiff's Motion for Reconsideration. (Pa 001-002). The Court concluded that Plaintiff failed to sufficiently describe the fictitious parties in the original complaint. Id.

The March 14, 2025 Order materially affects Plaintiff's ability to pursue his claims against the parties disclosed by Port Authority in its Answers to Interrogatories namely EWR Conrac and SIXT. Id. (Pa101-Pa113, Pa107, Pa110).

Plaintiff' asserts that this denial has prevented him from asserting claims against the proper defendants and thus runs counter to issues of transparency, fairness, and public accountability in litigation involving quasi-governmental agencies. Id. (Pa001-Pa002).

Plaintiff asserts that his Complaint included fictitious party designations identifying unknown entities responsible for the maintenance, operation, and control of the premises where the accident occurred. (Pa051-Pa085).

While the Court determined that these allegations were insufficient under R. 4:26-4, Plaintiff states that the Complaint provided the level of detail required by law, consistent with Farrell v. Votator, 62 N.J. 111 (1973).

On April 2, 2025 Plaintiff 's counsel submitted a letter to the Hon. Joseph A. Turula, P.J.Cv., pursuant to R. 1:7-4, requesting clarification of the March 14, 2025 Order. (Pa 235-Pa241).

On March 18, 2025 Co-Defendant Gardaworld filed a Motion to Permit the filing of a third-party Complaint against EWR Conrac and SIXT which the Court granted on 4-11-25. (Pa242-Pa279).

While the trial court determined that Plaintiff's allegations were insufficient under R. 4:26-4, in the typewritten language in the Order, the Court denied Plaintiff's motion "pursuant to R. 4:42-2 and R. 4:26-4," referencing Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021) and found that Plaintiff "failed to sufficiently identify [the fictitious parties] in the original pleadings. (Pa001-Pa002). The Court's ruling appears to have addressed only one part of the analysis under R. 4:26-4 — the specificity of Plaintiff's fictitious designation — while omitting several factual and procedural matters raised in the motion and reply papers that bear directly on the interests of justice under R. 4:42-2. (Pa001-Pa002).

Most significantly, the Court failed to address the conduct of the Port Authority of New York and New Jersey's predecessor counsel, who falsely certified

in its Answer under Rule 4:5-1(b)(2) that all necessary and known parties had been joined. (Pa222–Pa290). This certification was materially misleading.

As discovery later confirmed, the Port Authority knew or should have known that EWR Conrac, LLC and SIXT Rent A Car, LLC, exercised control over the premises where the incident occurred pursuant to a lease agreement. [(Pa101–Pa113, Pa107, Pa110).] Despite receiving Plaintiff's timely Notice of Claim with photographic evidence (Pa020-Pa030, Pa014) and acknowledging the incident in writing on November 22 and 30, 2022 (Pa015, Pa016), the Port Authority never disclosed that the QTA Lot was leased to or operated by third parties. Instead, it affirmed that the incident occurred on Port Authority property and requested medical authorizations—reinforcing the impression that it was the proper party to sue.

The Port Authority's Rule 4:5-1 Certification furthered this misimpression by expressly stating that all necessary parties had been joined. (Pa041-Pa047). Plaintiff, relying on these representations, directed litigation strategy and discovery efforts toward establishing Port Authority's liability as owner and operator of the premises. (Pa235-Pa237). Despite targeted discovery requests—including interrogatories and demands for contracts, maintenance records, and inspection logs—the Port Authority continued to withhold information identifying the true lessee and operator. (Pa054-Pa063).

Only after the statute of limitations expired did the Port Authority, now represented by substituted counsel appearing on Chubb-affiliated letterhead, disclose that EWR Conrac was the lessee, SIXT the operator, and Federal Insurance Company (a Chubb subsidiary) provided $5 million in liability coverage. (Pa013). These disclosures were made in interrogatory answers certified by Stephen Bowers, the very same Port Authority claim representative who had previously acknowledged the Notice of Claim in 2022 without mentioning any third-party involvement. (Pa102-Pa113).

Further compounding the inequity, these certified responses were served by Kirmser Cunningham & Skinner, attorneys identified on their letterhead as employees of ACE American Insurance Company, a Chubb company. (Pa188). In Answer #14, Bowers revealed for the first time the existence of a lease between the Port Authority and EWR Conrac, LLC—more than a year after the incident, and well beyond the statute of limitations. (Pa193-Pa199). This delayed disclosure prejudiced Plaintiff and deprived him of the opportunity to amend his Complaint in a timely fashion. (Pa235-Pa237).

Plaintiff asserts that the Complaint provided the level of detail required by law, consistent with Farrell v. Votator, 62 N.J. 111 (1973).

Plaintiff filed a Motion for Leave to File an Interlocutory Appeal on April 3, 2025, which the Appellate Division granted by Order dated May 29, 2025.

(Pa280-Pa284, Pa285-Pa286).

On April 11, 2025, the trial court (Hon. Joseph A. Turula, P.J.Cv.) entered an Order granting Defendant United American Security (a.k.a. Gardaworld), Inc.'s Motion for Leave to File a Third-Party Complaint against EWR CONRAC, LLC and SIXT Rent A Car, LLC. (Pa287-Pa288). That Complaint, asserting claims for contribution and indemnification, has since been filed and served. (Pa289-Pa291). An Answer was filed by Port Authority and EWR Conrac on May 28, 2025. (Pa292-Pa303). An Answer was filed by SIXT on June 4, 2025. (Pa304-Pa315).

Second, on April 11, 2025 the Court denied Plaintiff's request to extend the discovery end date and adjourn the case arbitration which had been scheduled for May 15, 2025, despite the addition of new parties, EWR CONRAC, LLC and SIXT Rent A Car, LLC. and the pendency of the Plaintiff's Motion for Leave to File an Interlocutory which this Court granted (Pa318). The Trial Court's ruling and Order cited a lack of "exceptional circumstances," even though the scope of the case had materially changed. (Pa316-Pa317).

The Appellate Division also granted Plaintiff's subsequent Motion to Supplement the record of the subsequent Court Orders permitting Co-Defendant United American Security, Inc.'s [a.k.a. Gardaworld] to assert a third-party Complaint against EWR Conrac and SIXT and to stay all trial court proceedings, including arbitration on May 15, 2025. (Pa318, Pa319-Pa320).

This appeal follows. Plaintiff adopts and incorporates by reference all of the facts contained within its Brief and Appendix previously filed on April 3, 2025. (Pa280-Pa284).

LEGAL ARGUMENT

POINT I

THE TRIAL COURT ERRED IN DENYING PLAINTIFF'S MOTION TO AMEND THE COMPLAINT UNDER RULE 4:26-4 WHERE THE REQUIREMENTS FOR FICTITIOUS PARTY SUBSTITUTION WERE MET AND LEAVE TO AMEND SHOULD HAVE BEEN FREELY GRANTED IN THE INTEREST OF JUSTICE (Pa001, Pa141)

R. 4:26-4 of the New Jersey Court Rules permits plaintiffs to designate fictitious defendants in pleadings when the identities of the responsible parties are unknown at the time of filing. Once the plaintiff learns the true identity of a previously unknown party, amendment should be permitted so long as the party exercised due diligence, and the newly named defendants are not prejudiced by the timing of the amendment. *Pressler & Verniero*. Current N.J. Court Rules, (GANN) Comment R.4:26-4.1, 2, 3 and 4. The rule is designed to balance judicial efficiency with fairness to plaintiffs who have timely filed suit in good faith. *Pressler & Verniero*, Current N.J. Court Rules, (GANN) Comment R.4:26-4.1, 2, 3 and 4. In this case, Plaintiff named fictitious parties in the Complaint, as permitted under R. 4:26-4, because the precise identity of the entities responsible for ownership and operation of the lot was not disclosed by the Port Authority. Despite receiving a Notice of Claim (Pa042-Pa047) and being served with discovery requests specifically targeting ownership, maintenance, and control of the incident location, the Port Authority failed to disclose that the subject premises were leased to EWR

Conrac, LLC and operated by SIXT Rent A Car, LLC. (Pa102-Pa113). It was only after the statute of limitations had expired that the Port Authority's substituted counsel served interrogatory responses revealing, for the first time, the true identities of EWR Conrac and SIXT (Pa103-Pa114]. Plaintiff filed a motion to amend under R. 4:26-4 upon learning this information (Pa143-Pa216). The trial court denied the motion (Pa141-Pa142) and later denied reconsideration (Pa001-Pa002)—even though it subsequently permitted a co-defendant, GardaWorld, to file a third-party complaint against these same parties. (Pa287-Pa288).

The trial court's refusal to grant Plaintiff's motion to amend was a mistaken exercise of discretion, as Plaintiff met the requirements for substitution under R. 4:26-4. Courts have consistently held that a motion to amend to substitute real parties for previously identified fictitious defendants should be freely granted when a plaintiff acts with reasonable diligence. See Greczyn v. Colgate-Palmolive, 183 N.J. 5, 10 (2005).

Here, Plaintiff diligently pursued discovery and was misled by the Port Authority's failure to disclose critical facts—despite having been put on notice through the timely filed Notice of Claim. (Pa150-Pa160). Where the record reflects that the delay in naming the correct defendants resulted not from inaction but from another party's failure to provide truthful discovery responses, courts should not

punish the plaintiff. See Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111, 122 (1973).

Under these circumstances, the denial of Plaintiff's motion to amend not only contradicts the liberal standard for amendments under Rule 4:26-4 but also undermines fundamental principles of fairness and justice. The trial court's ruling should be reversed.

POINT II

THE LOWER COURT MISAPPLIED THE STANDARD FOR RECONSIDERATION UNDER RULE 4:42-2 AND FAILED TO ADDRESS CRITICAL FACTUAL OMISSIONS BY THE PORT AUTHORITY THAT PREJUDICED PLAINTIFF'S ABILITY TO AMEND (Pa001-Pa002; Pa092; Pa141-Pa142; Pa188-Pa200)

Under Rule 4:42-2, a court may reconsider any interlocutory order "for good cause shown" and "in the interest of justice." This standard is broader and more flexible than Rule 4:49-2, which governs motions to alter or amend final judgments and applies only in limited circumstances. As clarified in Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021), Rule 4:49-2 does not apply to interlocutory rulings, and reconsideration should be guided by the interests of justice alone. Id. at 134.

Here, the trial court improperly denied reconsideration of its prior order, denying Plaintiff's motion to amend. (Pa001-Pa002). While citing Lawson, the court failed to apply its core principle: that interlocutory orders may be revisited when necessary to prevent injustice or when new information alters the context of the original decision. Lawson, supra.

Critically, Plaintiff demonstrated that new facts emerged after the initial ruling—namely, that the Port Authority's substituted counsel revealed for the first time that EWR Conrac and SIXT were the actual entities responsible for the property. (Pa101-Pa113).This disclosure followed months of silence, a misleading Rule 4:5-1 Certification, and lack of timely discovery responses that failed to

identify the proper defendants. Id. These failures by the Port Authority contributed directly to Plaintiff's inability to identify and sue the correct parties before the statute of limitations expired.

Moreover, the trial court's failure to even acknowledge the Port Authority's procedural misconduct, including its certification that no other parties were needed—deprived Plaintiff of a meaningful review. The interests of justice warranted reconsideration where the court itself later permitted a co-defendant to implead the very same entities Plaintiff was prevented from naming.

In denying reconsideration without addressing these points, the trial court abused its discretion under Rule 4:42-2. Reversal is warranted.

POINT III

THE LOWER COURT'S REFUSAL TO ALLOW ORAL ARGUMENT ON A CONTESTED, DISPOSITIVE MOTION DEPRIVED PLAINTIFF OF DUE PROCESS AND CONTRAVENED THE COURT RULES AND FAIRNESS PRINCIPLES (Pa235-Pa237)

Under New Jersey Court Rule 1:6-2(d), parties are presumptively entitled to oral argument on any motion that is opposed and dispositive in nature. The denial of Plaintiff's motion to amend the complaint effectively barred claims against the correct defendants, making it clearly dispositive. (Pa235-Pa237). Plaintiff timely requested oral argument in the Notice of Motion and later renewed the request after submitting a letter-brief addressing new developments. Id.

The court's law clerk informed Plaintiff's counsel by phone that any points not raised in the reply brief could be addressed during oral argument. Id. Despite this assurance, the court later denied the request for oral argument three days before the return date and issued its opinion without providing an opportunity to be heard. Id. This sequence denied Plaintiff meaningful participation in a critical phase of the litigation.

The Appellate Division has repeatedly held that denial of oral argument on important, contested motions constitutes reversible error. See Filippone v. Lee, 304 N.J. Super. 301, 306 (App. Div. 1997); Great Atl. & Pac. Tea Co., Inc. v. Checchio, 335 N.J. Super. 495, 496–97 (App. Div. 2000). "[W]here the motion is complex or

dispositive, oral argument is required to assure fairness in the decision-making process." Palombi v. Palombi, 414 N.J. Super. 274, 285 (App. Div. 2010).

The court's refusal to hold oral argument on a motion that affected Plaintiff's ability to proceed against the correct parties—and its subsequent failure to address critical new facts—compounded the prejudicial error and undermined Plaintiff's right to a full and fair hearing. This error independently warrants reversal.

POINT IV

EQUITY REQUIRES REVERSAL WHERE THE PORT AUTHORITY'S MISREPRESENTATIONS AND OMISSIONS MISLED PLAINTIFF AND FRUSTRATED A TIMELY AMENDMENT UNDER R. 4:26-4 AND R. 1:1-2

(Pa020-Pa030, Pa042, Pa047, Pa054-Pa059, Pa102-113, Pa143-Pa216, Pa193, Pa222-Pa233, Pa141-Pa142, Pa238-Pa239)

Even beyond the standards of Rule 4:26-4 and Rule 4:42-2, this Court should reverse the denial of leave to amend based on equitable principles. A party—particularly a public entity—cannot benefit from its own strategic nondisclosure, especially where that conduct misleads the opposing party and obstructs timely relief. Here, the Port Authority of New York and New Jersey failed to disclose the true parties responsible for the premises despite receiving a timely Notice of Claim (Pa020-Pa030), targeted discovery demands and filing formal pleadings. (Pa054-Pa 059). That failure materially impaired Plaintiff's ability to timely identify and name EWR Conrac, LLC and SIXT Rent A Car, LLC, as defendants.

Following Plaintiff's Notice of Claim on November 18, 2022—accompanied by photographs of the incident site (Pa020–Pa030)—the Port Authority responded by confirming the incident occurred on its property and requesting medical authorizations and treating provider information (Pa042, Pa047). At no point did it suggest the QTA Lot was leased to or operated by third-party entities. The Port Authority later filed its Answer along with a Rule 4:5-1(b)(2) Certification, affirming that all necessary and known parties had been joined. (Pa222-Pa233).

Plaintiff reasonably relied on these representations and tailored his litigation strategy accordingly.

Despite interrogatories and document demands requesting contracts, maintenance agreements, and inspection records, the Port Authority failed to identify EWR Conrac or SIXT before August 12, 2024. (Pa102-Pa113). Only after the statute of limitations expired did substituted counsel—appearing on letterhead as employees of Chubb's affiliated entities—serve interrogatory responses identifying EWR Conrac as lessee, SIXT as operator, and Federal Insurance Company (a Chubb subsidiary) as the liability carrier with $5 million in coverage (Pa102-Pa113). The interrogatories were certified by Stephen Bowers, the Port Authority's own claims representative (Pa113)—the same individual who acknowledged the Notice of Claim in 2022 but never disclosed this information. (Pa042, Pa047).

In Defendant Port Authority Answer Form C Interrogatory #14, Bowers revealed the existence of a lease between the Port Authority and EWR Conrac for the first time, long after the limitations period had passed (Pa193). By then, the damage had been done: Plaintiff was deprived of any opportunity to investigate or name the proper defendants in time.

A. Reversal Is Warranted Under R. 4:26-4 and R. 1:1-2

Rule 4:26-4 was enacted precisely to protect plaintiffs who are "unaware of the true identity of a defendant" and who act diligently. Farrell v. Votator Div. of Chemetron

Corp., 62 N.J. 111, 122 (1973). The Rule should be applied liberally to avoid injustice. Here, Plaintiff upon learning the identities of EWR Conrac and SIXT and moved to substitute them for the fictitious defendants. (Pa143-Pa216). Plaintiff did not become aware of these entities until Port Authority's late disclosures.

Rule 1:1-2 further empowers courts to relax the Rules to prevent "injustice" and "unjustifiable expense and delay." That authority is particularly important when a public entity's conduct affirmatively misleads another party. The Port Authority's actions induced reasonable reliance and caused Plaintiff to lose his ability to amend within the limitations period. Courts should not reward that conduct with procedural insulation.

B. The Lower Court Failed to Account for the Unfair Prejudice Caused by the Port Authority's Conduct

The Court below never addressed the Port Authority's misleading Rule 4:5-1(b)(2) Certification (Pa141-Pa142 and Pa238-Pa239) or the false implication—maintained for more than a year—that the Port Authority owned and operated the QTA Lot. Instead, the Court faulted Plaintiff for failing to timely amend. Id. This misallocates blame. The court should have found that Plaintiff's delay was induced by the Port Authority's silence, not by any lack of diligence on Plaintiff's part.

This scenario is precisely where equity must intervene. Otherwise, public entities could manipulate the fictitious party rule by delaying disclosure of third-

party actors until after the statute of limitations expires. That is not what Rule 4:26-4 or Rule 1:1-2 was designed to allow.

The Appellate Division should reverse the trial court's decision and remand with instructions to permit amendment under Rule 4:26-4. Anything less would reward procedural gamesmanship and frustrate the remedial purpose of New Jersey's liberal pleading rules.

POINT V

THE LOWER COURT MISAPPLIED RULE 4:26-4 BY IMPOSING AN UNDULY RIGID STANDARD INCONSISTENT WITH PRECEDENT AND THE RULE'S REMEDIAL PURPOSE (Pa020–Pa025; Pa070-Pa084)

The lower court's denial of Plaintiff's motion to amend the Complaint under Rule 4:26-4 reflects a misapplication of the rule's purpose and a departure from the liberal standards established in binding New Jersey precedent. Rule 4:26-4 is designed to afford plaintiffs the opportunity to discover the true identity of a fictitiously named defendant and amend the complaint accordingly, provided that the plaintiff exercised diligence and the newly identified party was not prejudiced by the delay.

This standard does not require a showing of impossibility or perfect diligence; rather, it reflects the principle that fairness must guide procedural decisions. See Farrell v. Votator Div. of Chemetron Corp., 62 N.J. 111 (1973) Rule 4:26-4 allows a plaintiff to designate unknown parties as fictitious defendants where their identities are unknown at the time of filing. The Rule states:

> if the defendant's true name is unknown to the plaintiff, process may issue against the defendant under a fictitious name, stating it in the pleadings with an appropriate description sufficient for identification.

In the case before this Court, Plaintiff's Complaint:

A. Identified the accident location (41 Brewster Road, Newark).

B. Alleged that the premises were owned, operated, controlled, leased, maintained, or inspected by the Defendants."

C. Described the dangerous condition (a rising metal barrier).

In Fede v. Clara Maass Hospital, 221 N.J. Super. 329 (App. Div. 1987), the Appellate Division addressed the application of Rule 4:26-4 concerning fictitious party designations. The court emphasized that to satisfy the requirements of the rule, a plaintiff must designate the fictitious name as such and add an appropriate description sufficient to identify" the defendant. In this case, the plaintiff's complaint alleged that the defendants constructed, owned, controlled, designed and maintained a certain stairway at the premises in a negligent manner, causing a dangerous condition to exist. The court found this description adequate under the rule, allowing the plaintiff to amend the complaint to substitute for the true names of the defendants once they were discovered, even after the statute of limitations had expired.

In Greczyn v. Colgate-Palmolive, 183 N.J. 5 (2005), the New Jersey Supreme Court addressed the application of Rule 4:26-4 concerning fictitious party designations. The Court emphasized that to satisfy the requirements of the rule, a plaintiff must designate the fictitious name as such and add "an appropriate description sufficient to identify 11 the defendant.

In this case, the plaintiffs complained that the defendants "designed, planned, and supervised" the construction of a staircase where the injury occurred. The Court

found this description adequate under the rule, allowing the plaintiff to amend the complaint to substitute the true names of the defendants once they were discovered, even after the statute of limitations had expired.

Similarly, in Farrell v. Votator Div. of Chemetron Corp., 62 N .J. 111 (1973), the New Jersey Supreme Court held that fictitious party practice under Rule 4:26-4 permits a plaintiff to amend a complaint to identify a defendant previously named fictitiously, provided the plaintiff exercised due diligence in ascertaining the defendant1s true identity. In this case, the plaintiff was allowed to substitute the true name of a defendant after the statute of limitations had expired because the plaintiff had made diligent efforts to identify the responsible party.

These cases demonstrate that New Jersey courts permit the use of fictitious party designations under Rule 4:26-4 when the plaintiff provides an appropriate description sufficient to identify the unknown defendant, thereby allowing amendments to the complaint once the defendant s true identity is ascertained.

In the case at bar, the Complaint specifically identified the accident location, alleged that the premises were controlled by the Defendants and described the dangerous condition (a rising metal barrier). (Pa070-Pa084) This is the type of functional description that courts in Greczyn and Farrell found to be sufficient.

Here, Plaintiff promptly filed a Complaint after serving a detailed Notice of Claim, including a photograph of the scene (Pa20–Pa25). The Port Authority

acknowledged the location but certified that no additional parties were necessary (Pa100). Despite multiple targeted discovery requests seeking maintenance records, inspection logs, and contracts, the Port Authority did not disclose the existence of EWR Conrac, LLC or SIXT Rent A Car, LLC until after the statute of limitations had expired.

Courts interpreting Rule 4:26-4 have repeatedly held that late amendments are permitted where the delay in identifying the correct parties was the result of defendants' failure to provide necessary information. See Claypotch v. Heller, Inc., 360 N.J. Super. 472 (App. Div. 2003) (reversing dismissal where plaintiff named the wrong entity of a manufacturing punch press.

Here, the Plaintiff acted with reasonable diligence and was actively misled by the Port Authority's conduct and silence. Under these circumstances, the trial court's refusal to allow amendment under Rule 4:26-4 was not just error—it was legal injustice. This Court should reverse and remand with instructions that Plaintiff be permitted to substitute for EWR Conrac, LLC and SIXT Rent A Car, LLC in place of the fictitious defendants originally named in the Complaint. In Farrell, Id., the plaintiff was permitted to substitute a fictitious defendant with the real party even after the statute of limitations expired because the plaintiff exercised due diligence in attempting to identify the responsible patty.

Similarly, in the case at bar, PANYNJ actively concealed EWR Conrac's LLC's involvement, preventing Plaintiff from timely amending the complaint.

Greczyn supra, supplements Plaintiffs argument that if a defendant has superior knowledge of the responsible entity and fails to disclose it, the plaintiff should not be penalized for filing against a fictitious patty.

Accordingly, Plaintiff requests that the Court grant its application for reversal of the lower court order and permitting Plaintiff to substitute EWR Conrac and SIXT in place of the fictitiously plead defendants.

CONCLUSION

For all the reasons set forth above, the trial court erred in denying Plaintiff's motion to amend the Complaint pursuant to Rule 4:26-4. The ruling disregarded the Rule's remedial purpose, misapplied the standard for fictitious party substitution, and failed to account for the Port Authority's misleading certifications and delayed disclosure of the actual parties responsible for the premises. The equities of this case, supported by clear precedent and Rule 1:1-2, compel reversal.

Plaintiff exercised diligence by timely serving a detailed Notice of Claim, filing a Complaint with appropriate fictitious party designations and descriptions, and pursuing discovery requests designed to identify the correct defendants. It was the Port Authority's own conduct—including its false Rule 4:5-1 certification and strategic withholding of critical information—that prevented timely amendment.

Allowing that conduct to bar Plaintiff's claims would reward concealment, frustrate the truth-seeking function of discovery, and produce an unjust result.

Accordingly, Plaintiff respectfully requests that this Court reverse the trial court's denial of the motion to amend the Complaint and remand the matter with instructions to permit substitution of EWR Conrac, LLC and SIXT Rent A Car, LLC in place of the fictitious defendants originally named in the pleading.

Respectfully submitted,

Dated: July 28, 2025

Christopher P. Gargano

EDWARD MCNEILL, JR. Plaintiff vs. PORT AUTHORITY OF NY & NJ, GARDAWORLD, JOHN DOES 1-10, JANE DOES 1-10 and XYZ ENTITIES (1-10), said names being fictitious, Defendants. UNITED AMERICAN SECURITY, LLC D/B/A GARDAWORLD SECURITY SERVICES I/P/A GARDAWORLD, Third-Party Plaintiff, vs. EWR CONRAC, LLC AND SIXT RENT A CAR, LLC, Third-Party Defendants	SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION ON APPEAL FROM THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION DOCKET NO. HUD-L-1864-23 SAT BELOW: HON. JOSEPH A. TURULA, P.J. CV.

BRIEF AND APPENDIX OF DEFENDANT/RESPONDENT PORT AUTHORITY OF NY & NJ

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PRELIMINARY STATEMENT

The question for this Court is whether the trial court abused its discretion when it denied a motion to amend the pleadings to add new parties after the statute of limitations had expired. The question should be answered in the negative and the orders affirmed.

The trial court correctly determined Plaintiff's Complaint failed to describe with sufficient detail a fictitious party such that Plaintiff could not rely on R. 4:26-4 to belatedly amend his Complaint. Thus, the denial of both the initial motion and the motion for reconsideration was correct.

Moreover, Plaintiff's own moving papers failed to demonstrate the requisite diligence to allow fictitious party practice even if Plaintiff's Complaint had been properly pled. Thus, there was no basis, with or without oral argument, for the trial court to grant Plaintiff the relief requested.

Because the orders appealed from were the only permissible result under our Rules of Court, and there is no reason to deviate from those rules, this Court should affirm.

PROCEDURAL HISTORY[1]

On November 18, 2022, Plaintiff sent a Notice of Claim alleging a June 8, 2022 injury "at the Newark/Liberty International Airport Parking Lot, Newark, NJ." Pa020.

On May 26, 2023, Plaintiff filed a Complaint in the Superior Court of New Jersey, Hudson Vicinage. Pa050.

On June 6, 2023, Plaintiff filed an Amended Complaint, which changed the spelling of Plaintiff's name. Pa070. The Amended Complaint names as Defendants "Port Authority of NY & NJ, GardaWorld, and "John Does 1-10, Jane Does 1-10 and XYZ Entities (1-10), said names being fictitious and used to designate persons or entities whose real identities are presently unknown." Pa070.

United American Security, LLC ("GardaWorld") filed an Answer to the Amended Complaint on behalf of the entity identified as GardaWorld on August 4, 2023. Pa178.

The Port Authority, through its Law Department, filed an Answer to the Amended Complaint on September 8, 2023. Pa086.

[1] All facts relevant to this appeal from a procedural decision are contained in this Procedural History. Accordingly, no counterstatement of facts is being filed.

The statute of limitations as to the proposed defendants expired on June 8, 2024. N.J.S.A. 2A:14-2(a).

On June 13, 2024, current counsel substituted as counsel for the Port Authority. Pa100. No discovery had been exchanged by the parties by that date.

On July 10, 2024 GardaWorld served its discovery responses and identified both EWR ConRAC LLC and SIXT Rental Car LLC, the parties at issue, as potentially being liable. Da4 at No. 7, Da6 at No. 2.

On August 12, 2024, The Port Authority provided its written discovery responses. Pa102. In those responses, the Port Authority certified it owned the real property at issue, but that same was leased to EWR ConRAC, LLC and GardaWorld was contracted by SIXT to operate the gate at issue. Pa110.

Five (5) months later, on January 14, 2025, Plaintiff filed a motion to amend the Complaint, which sought to correct the name of GardaWorld and substitute EWR ConrRAC, LLC and SIXT for two "fictitious" parties. Pa143. That motion was supported by a Certification of Counsel. Pa145–48. The Port Authority, desiring the case that was now years old to move forward, opposed through a letter brief. Pa217–21.

On January 31, 2025, the Honorable Joseph A. Turula, P.J. Cv. entered an order permitting the filing of a Second Amended Complaint to correct the name of GardaWorld, but denying the relief as to substituting EWR ConRAC, LLC

and SIXT for fictitious "XYZ" defendants. Pa141–42. The Court determined there was no appropriate description of the fictitious parties in the prior pleadings to allow the use of R. 4:26-4. Pa141–42.

Plaintiff did not file a Second Amended Complaint.

On February 20, 2025, Plaintiff filed a motion for reconsideration. Pa003. The motion was again supported by a Certification of Counsel. Pa005–Pa010. The motion sought oral argument if it was opposed. Pa144. The Port Authority opposed the motion by way of letter brief. Pa135–39. No reply papers were filed. There was no oral argument.

On March 14, 2025 Judge Turula denied the motion for reconsideration. Pa238–39. The resulting order again stated there was an insufficient description of the allegedly unknown parties in the initial pleadings so as to permit the use of R. 4:26-4. Pa239. Judge Turula, citing R. 4:42-2, opined the "interests of justice" are not served by "the substitution of fictitious names here as the Movant failed to sufficiently identify them in the original pleadings." Pa239.

On March 18, 2025, GardaWorld filed a Motion seeking leave to file a Third-Party Complaint against EWR ConRAC and SIXT. Pa242-79.

On April 11, 2025, Judge Turula entered an Order granting GardaWorld the right to file a Third-Party Complaint, which was then filed by the Clerk on April 15, 2025. Pa289-91.

STANDARD OF REVIEW

Orders denying motions to amend and motions for reconsideration are reviewed for an abuse of discretion. Fisher v. Yates, 270 N.J. Super. 458, 467 (App. Div. 1994); Cummings v. Bahr, 295 N.J. Super. 374, 389 (App. Div. 1996). "An abuse of discretion arises when a decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." AC Ocean Walk, LLC v. Blue Ocean Waters, LLC, 478 N.J. Super. 515, 523 (App. Div. 2024) ((quoting Pitney Bowes Bank, Inc. v. ABC Caging Fulfillment, 440 N.J. Super. 378, 382 (App. Div. 2015)).

LEGAL ARGUMENT

There was no error or abuse of discretion by Judge Turula and his orders should be affirmed. The Complaint itself is fatal to Plaintiff's requested relief and, even if it were not, a lack of evidence in the motion record showing due diligence in investigating the identities of the proposed defendants and moving to amend to name them is fatal to Plaintiff's argument that the motions should have been granted.

Judge Turula evaluated both motions under the appropriate standard. The papers in support of the motions fatally undermined the relief sought, such that deciding the motions on the papers was entirely appropriate. Plaintiff's protestations regarding not being able to submit a "sur-reply" when Plaintiff

never submitted the reply to which he was entitled, make little sense. Similarly, the assertion that oral argument was required when the motions were fundamentally flawed and could not be salvaged by same lacks merit. And, despite what Plaintiff may argue, it is not the fault of any other party he did not diligently investigate his claim.

Plaintiff should not be permitted to belatedly add parties he could have timely identified and impleaded, but failed to seek and join. And, he should not be allowed to belatedly add parties he knew about for more than five (5) months during the litigation and after the statute of limitations had run, but took no action against.

Judge Turula was correct that the motion to amend should not be granted and the interest of justice is not served by permitting such an amendment. Accordingly, the orders should be affirmed.

POINT I

THE ORDER DENYING LEAVE TO AMEND THE COMPLAINT WAS CORRECT BECAUSE THE COMPLAINT WAS DEFICIENT UNDER R. 4:26-4 AND PLAINTIFF FAILED TO SHOW DUE DILLIGENCE

Judge Turula twice opined Plaintiff failed to properly utilize fictitious party practice to join two new direct defendants after the statute of limitations ran. A review of the Complaint shows he was correct. Additionally, Plaintiff has the burden of showing, not merely asserting, he exercised reasonable due

diligence to identify and join a party previously designated as a fictitious party both within the limitations period and after they are identified. The record contains no evidence Plaintiff met that burden; the motions were fundamentally and fatally flawed from the start. The orders denying Plaintiff relief should be affirmed.

A: THE COMPLAINT WAS DEFICIENT UNDER R. 4:26-4 BECAUSE THE FICTICIOUS PARTIES WERE NOT DESCRIBED

A plaintiff utilizing a fictitious party designation must "add[] an appropriate description [of the unknown party] sufficient for identification." R. 4:26-4; Greczyn v. Colgate-Palmolive, 183 N.J. 5, 11 (2005) ("[F]or the rule to operate, a specific claim must be filed against *a* described, though unnamed party . . . .") Fictitious party practice exists to allow a plaintiff to "sue a person or entity as 'John Doe' if the plaintiff knows a cause of action exists against the defendant but does not know the defendant's identity." Krzykalski v. Tindall, 232 N.J. 525, 537 (2018) (citing Greczyn, 183 N.J. at 11). When correctly employed, a John Doe count will toll the statute of limitations as to that unknown and sufficiently described party until its identity is discovered and the complaint is amended accordingly under R. 4:9. Ibid.

The relation back effect of R. 4:26-4 is unavailable to a plaintiff who "has properly designated some defendants by fictitious names and then later discovers a cause of action against undescribed defendants whom he then seeks

to join." Greczyn, 183 N.J. at 11 (quoting Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:26-4 (2016)). Stated differently, even a specifically worded John Doe count describing one specific type of unknown party is not universally applicable to any other type of party a plaintiff may someday discover and then wish to sue. See ibid.

The Complaint does not either substantively describe or distinguish among the "defendants" it names, whether real or fictitious. Pa050-54.

The Caption is the only place in the Complaint the "defendants" are named. Pa050. In the Caption, plaintiff sues as "defendants":

> PORT AUTHORITY OF NY & NJ, GARDAWORLD, JOHN DOES 1-10, JANE DOES 1-10, and XYZ ENTITIES (1-10), said names being fictitious and used to designate persons or entities whose real identities are presently unknown
>
> [Pa050.]

Then, without defining the "defendants" in the body of the Complaint, Plaintiff states the "defendants," seemingly as a collective, "owned, operated, controlled and leased, subleased, maintained, constructed, repaired, supervised or inspected" a certain premises. Pa050 at ¶¶1-2. The Complaint's allegations sound in negligence, product liability, and breach of warranty, all of which are pled generically against the "defendants." Pa050–054. Functionally, the Complaint alleges that all defendants — without making even a cursory effort

to differentiate between them — did certain things and had certain common duties under various theories of liability. Pa050–054.

If this degree of cosmetic pleading and grouping with identified parties were deemed permissible, the "appropriate description sufficient for identification" provision of R. 4:26-4 would be read out of the rule. And by extension, statutes of limitation would be rendered entirely unenforceable.

Judge Turula did not abuse his discretion in determining that there was not a sufficient description of a proposed "DOE" or "XYZ ENTITIES" that would allow the use of R. 4:26-4. For these reasons, Judge Turula's orders should be affirmed.

B: THE MOTIONS WERE PROPERLY DENIED BECAUSE PLAINTIFF OFFERED NO EVIDENCE THAT HE EXERCISED DUE DILLIGENCE TO DISCOVER THE FICTICIOUS PARTIES' IDENTITIES WITHIN THE LIMITAITON PERIOD AND HE DID NOT ACT DILIGENTLY THEREAFTER

Because the Complaint is fundamentally flawed, Judge Turula did not need to further inquire into Plaintiff's diligence. However, if he had, there were ample grounds in the record to deny the relief Plaintiff sought because the record was devoid of evidence presenting a reason to grant the motion.

Diligence in identifying and joining the fictitious party is a fundamental requirement of invoking the fictitious party practice rule and its relation back effects. That diligence must be shown both before the running of the statute of

limitations and after the formerly unknown party is identified. Plaintiff offered no competent proof showing he exercised any reasonable diligence in identifying the parties he sought to join or in joining them after they were identified by GardaWorld.

"To be *entitled* to the benefit of the [fictitious party] rule, a plaintiff *must proceed with due diligence* in ascertaining the fictitiously identified defendant's true name" before the complaint is timely filed with the John Doe count in that defendant's place. Baez v. Paulo, 453 N.J. Super. 422, 438 (App. Div. 2018) (citing Claypotch v. Heller, Inc., 360 N.J. Super. 472, 479–80 (App. Div. 2003)) (emphasis in original). Due diligence means a reasonable investigation. Baez, 453 N.J. Super. at 439–40 (citing Matynska v. Fried, 175 N.J. 51, 52-54 (2002)). A "plaintiff who had ample time to discover the unknown defendant's identity before the running of the statute of limitations" is not permitted to substitute a new party in for a John Doe once the statute of limitations has run. Greczyn, 183 N.J. at 11 (quoting Pressler & Verniero, cmt. 2 on R. 4:26-4).

Where information is readily available to a litigant, but not pursued, he or she cannot show diligence and invoke the protections of fictitious party practice. See Pressler & Verniero, cmt. 3 to R. 4:26-4; see e.g., Cardona v. Data Systems Computer Centre, 261 N.J. Super. 232 (App Div. 1992) (holding failure to obtain a police report that identified the late-added defendant is a lack of due diligence

and foreclosed plaintiff from invoking the fictitious name practice); Younger v. Kracke, 236 N.J. Super. 595, 601 (Law. Div.1989) (finding a lack of due diligence in a car accident case when the plaintiffs could have simply called the State Police to identify the other vehicle involved); see also Rowell v. Stecker, 698 Fed. App'x. 693, 696 (3rd Cir. 2017) ("Litigating claims against the wrong parties does not constitute diligence when the true defendants were identifiable all along.")

The motion record did not reveal Plaintiff having done anything to identify the fictitious parties before filing the Complaint. Plaintiff is no stranger to the property or operations thereon; he works there. And, while he tacitly claims by pursuit of the motions and this appeal, without submitting an affidavit or certification, that he did not know who the proposed defendants were, he has not shown any reason why he could not have endeavored to identify the proposed defendants.

Plaintiff, not just his attorney, had to tell Judge Turula why he did not know, and why he could not know, that SIXT and EWR ConRAC might be involved before the statute of limitations ran. Plaintiff could never make the showing himself because, for example, he was a party to a text message group titled "EDS-SIXT Newark" where he personally announced that this incident took place the day it occurred. Pa026. Plaintiff also presumably could have

simply asked his employer about the identities of the entities involved other than SIXT, but he provided the trial court no evidence of having done so.

Plaintiff cannot show he could not have known about EWR ConRAC because a simple Google search conducted by counsel for "QTA Lot Newark Airport" at the time of the motions revealed several websites on the first page of results referencing the ConRAC at Newark Airport lot by its name and identifying the related entities. See Pa032, 035-36. Even if Plaintiff did not know the name of the lessor or lessee, less than five minutes of cursory effort prior to the expiration of the statute of limitations would have yielded that information. Thus, even if Plaintiff claimed that he, as an employee working at the QTA lot at the ConRAC facility servicing Newark Airport did not know about EWR ConRAC, there is no evidence in the record that he attempted to and could not identify it before the statute of limitations ran in the absence of a certification or affidavit to that effect.

Beyond the failure to exercise diligence before both the filing of the Complaint and the expiration of the statute of limitations, there also is no evidence showing that waiting from July 2024, when GardaWorld identified the parties at issue or August 2024, when the Port Authority reiterated their

identities, to January 2025 was "diligent" as required by the Rule.[2] Waiting half a year to seek to amend the Complaint cannot be deemed diligence.

Plaintiff seemingly attempts to excuse his conduct by citation to Farrell v. Votator Div. of Chemtron Corp., 62 N.J. 111 (1973), in an attempt to shift the R. 4:26-4 burden of due diligence to the defendants. This is improper. The Supreme Court in Farrell held there must be a showing that the pleader acted in good faith and set forth in the complaint "all the information he was then able to obtain." Farrell, 62 N.J. at 120. The party seeking to use fictitious party practice must "proceed[] with diligence towards ascertaining the [party's] true name" *before* filing the initial pleading that seeks to invoke R. 4:26-4. See ibid. Once identified, the party must also identify the new party by amendment "as soon as" the party is discovered. Id. at 122.

Again, both motions were supported by Certifications of Counsel. Pa004, Pa144. Neither had a certification or affidavit from the Plaintiff made on personal knowledge showing his diligence in identifying the potentially culpable parties as required by R. 1:6-6 (requiring affidavits made on personal knowledge to support "facts not appearing of record or not judicially noticeable"). This is a critical, and fatal, omission. There is no evidence of any good faith or diligence,

[2] The amendment in Farrell was sought "as soon as" the identity of the manufacturer was disclosed in a February 26, 1970 deposition, such that the amendment was permitted by March 17, 1970. Farrell, 62 N.J. at 113–114.

as required by Farrell, by Plaintiff before the running of the statute of limitations without such an affidavit.

Because Plaintiff did not show diligence before or after the expiration of the statute of limitations through competent proof he never established the factual predicate necessary to invoke R. 4:26-4. Accordingly, Plaintiff failed to substantiate a basis for the trial court to grand relief and the orders denying his motions should be affirmed.

POINT II

GARDAWORLD'S THIRD PARTY COMPLAINT FOR CONTRIBUTION HAS NO BEARING ON PLAINTIFF

Plaintiff tries to create a false equivalency between his motions and the motion of GardaWorld. The third party action against EWR ConRAC and SIXT is a derivative claim for contribution under the New Jersey Joint Tortfeasors Contribution Act and Comparative Negligence Act. Pa0289-91. The contribution claim itself lays dormant until there is a final judgement against the defendant who asserts it. See Mejia v. Quest Diagnostics, Inc., 241 N.J. 360, 371-74 (2020). Further, when a direct defendant impleads a third party defendant under R. 4:8-1 after the statute of limitations on the plaintiff's direct claim has run, the existence of that third party claim does not revive a plaintiff's claim or eliminate the Plaintiff's burden to overcome the statute of limitations bar in joining that third party defendant as a direct defendant. Pressler & Verniero, cmt. 2 on R.

4:8-1 (2025) (citing McGlone v. Corbi, 59 N.J. 86 (1971)). In practice, by pleading the third party action, the timely named defendant is simply putting the third-party defendant on notice that if it is apportioned 60% or more of the fault at trial, it will seek to recover from the third-party defendant for the portion of negligence apportioned to the third-party defendant by a jury (i.e., up to 40% of a verdict). Mejia, supra, 241 N.J. at 373-374. Plaintiff, on the other hand, is seeking to circumvent a statute and impose limitless liability on parties it could have timely identified. Plaintiff's attempt to put two distinct procedural devices on equal footing is baseless and should be disregarded.

POINT III

THE TRIAL COURT PROPERLY APPLIED LAWSON

Plaintiff incorrectly argues Judge Turula did not follow Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021). Lawson, consistent with R. 4:42-2, states the decision to reconsider an order is "in the sound discretion of the court in the interest of justice." 468 N.J. Super. at 134. Judge Turula did not violate that standard. Indeed, he quoted it and applied it in reaching his decision. Pa002.

The record is clear Judge Turula reviewed the initial pleading and found it did not satisfy the requirements of R. 4:26-4. Pa01-02, Pa38-39. That decision is neither wrong nor an abuse of discretion as set forth in Point I, supra. Judge Turula properly determined the interest of justice is not served by the

"substitution of fictitious names . . .[where] the Movant failed to sufficiently identify" the parties. Pa002. Moreover, because of the other impediments in the motion record to Plaintiff availing himself of fictitious party practice, his amendment was futile.

This Court should affirm and hold it is not in the interest of justice to countenance a lack of diligence and advance pleadings that do not conform to the Rules of Court.

POINT IV

THE LACK OF ORAL ARGUMENT IS NOT REVERSIBLE ERROR PER SE, AND THERE WAS NO NEED FOR A "SUR REPLY"

Neither the lack of oral argument nor the supposed denial of a "sur reply" impacted the result and, even if such denials were in error, they were not "clearly capable of producing an unjust result." R. 2:10-2.

A. THE DENIAL OF ORAL ARGUMENT IS NOT REVERSIBLE ERROR

There was no need for oral argument on the motion to reconsider because the record is clear and the motion's outcome was inevitable. R. 1:6-2(d) allows a party to request oral argument on a non-discovery or calendar motion which is generally to be granted as of right. The absence of oral argument is not reversible error per se when the "motion judge nevertheless arrived at the proper result under the factual circumstances presented." See Triffin v. Am. Intern. Grp., Inc.,

372 N.J. Super. 517, 524 (App. Div. 2004); Finderne Heights Condo. Ass'n v. Rabinowitz, 390 N.J. Super. 154, 166 (App. Div. 2007) ("[T]rial court's failure to have oral argument, given the record in this matter, . . . [did not] prejudice [the movant] under the circumstances.") (citing Spina Asphalt Paving Excavating Contractors, Inc. v. Borough of Fairview, 304 N.J. Super. 425, 427 n.1 (App. Div. 1997)); See also Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (holding that the failure to submit requisite admissible proofs on a motion could not be cured by statements made at oral argument).

Plaintiff cites three (3) cases for the proposition that failure to grant oral argument is reversible error. Pb19-20. None are helpful to Plaintiff.

In Fillipone, the Appellate Court, under a rule applicable only to the Family Part and which should have led to oral argument, decided the failure to hold argument was not reversible error when considering a post-judgment child emancipation motion. Filippone v. Lee, 304 N.J. Super. 301, 306, 313 (App. Div. 1997).

Checchio criticized deciding cross-motions for summary judgment on the interpretation of a commercial lease without oral argument in a case where the Appellate Division felt oral argument was beneficial to it. Great Atl. & Pac. Tea Co., Inc. v. Checchio, 335 N.J. Super. 495, 497-98 (App. Div. 2000). Plainly, this case does not involve dispositive motions and is distinguishable.

Finally, Palombi, cited by Plaintiff as the source of a seemingly non-existent quote that conveniently encapsulates Plaintiff's proposition, held that oral argument was unnecessary on the family part motions at issue in part because of evidentiary infirmities in the motion record that could not be cured by oral argument.[3] Palombi v. Palombi, 414 N.J. Super. 274, 285 (App. Div. 2010).

Plaintiff has not identified how the denial of oral argument triggered an "unjust result." Plaintiff filed the motions. He had the ability to make any factual or legal argument in support of the motions and respond to every argument raised by the defense in a reply. R. 1:6-3(a). Indeed, he filed a motion for reconsideration and got a second bite at the proverbial apple. But, he did not make a sufficient record to support the grant of either motion. No commentary at oral argument would, or could, change either the facts or the pleadings. Plaintiff made no clear representation to the court below, or to this Court, that there is something not presented in his moving papers that would have been said

[3] The full quotation spanning pages 19-20 of Plaintiff's brief is as follows — "[W]here the motion is complex or dispositive, oral argument is required to assure fairness in the decision-making process." That quotation is attributed to page 285 of the Appellate Division's opinion in Palombi. Inasmuch as counsel is aware, no such quote exists on that page, or anywhere else in the opinion, which seemingly does not utilize the words "complex," "assure," "dispositive," "decision-making," or "fairness." Palombi, 414 N.J. Super. 274.

at oral argument which would have compelled a different result, and if there was such a thing, why that something was not said in writing.

The lack of oral argument did not prejudice Plaintiff because Judge Turula reached the correct result given the evidence presented to the Court by the parties. Accordingly, the orders should be affirmed.

B. THERE WAS NO NEED FOR A "SUR REPLY"

Plaintiff takes issue with the fact that Judge Turula allegedly denied a request to submit a sur-reply to the motion for reconsideration. See Pl. Br. at 8. The question becomes — a sur-reply to what? The Port Authority filed timely oppositions to the motion. Pa135-150, 217-221. Plaintiff had an absolute right to file a timely reply to make a record. R. 1:6-3(a). Plaintiff chose not to, and is now attempting to claim reversible error because of Judge Turula's supposed refusal to consider a pleading (which was never filed) responding to a pleading that never existed.[4] Any argument that Plaintiff was entitled to a "sur-reply" or that the refusal to consider same affected the disposition of the motions is a red herring designed to create the specter of error where none exists and cannot be the basis for reversal. Accordingly, Judge Turula's orders should be affirmed.

[4] A "sur-reply" logically requires that it be a response to a reply. As Plaintiff was the movant, the reply would have been his. But even if Plaintiff was trying to supplement his own reply, he never filed a reply he could supplement.

POINT V

EQUITABLE RELIEF IS INAPPROPRIATE

Plaintiff claims he was somehow misled by the Port Authority not identifying the third parties that he now would like to sue. He asserts this should excuse his conduct and that equity compels his motions being granted. This is fundamentally mistaken.

First, Plaintiff curiously claims the Port Authority's failure to identify a third party in response to the notice of claim (an obligation for which it cites no authority) somehow "reinforc[ed] the impression that [the Port Authority] was the proper party to sue." Pl. Br. at 10. That position would appear to be inconsistent with subsequently filing a "John Doe" action as Plaintiff claims he did asserting that perhaps the Port Authority was not the appropriate defendant. Regardless, the Port Authority was not compelled to investigate Plaintiff's case for him and did not tell Plaintiff not to investigate his case. Simply stated, there was no misconduct of any kind before the filing of the Complaint that would entitle Plaintiff to equitable relief.

Turning to the occurrences after the lawsuit was commenced, Rule 4:5-1(b)(2) requires that as part of each party's first pleading, there be "a certification as to whether the matter in controversy is the subject of any other

action pending in any court or of a pending arbitration proceeding, or whether any other action or arbitration proceeding is contemplated . . . .” The Rule goes on to require that “each party shall disclose in the certification the names of any non-party who should be joined in the action pursuant to R. 4:28 or who is subject to joinder pursuant to R. 4:29-1(b) because of potential liability to any party on the basis of the same transactional facts.” R. 4:5-1(b)(2). There is a “continuing obligation” to amend the certification “if there is a change in the facts stated in the original certification.” Id.

The obligations imposed by R. 4:5-1(b)(2) are intended to protect parties from application of the Entire Controversy Doctrine. See Pressler & Verniero, Current N.J. Court Rules, cmt 2.1 to R. 4:5-1(2025). The certification is not intended to be a substitute for diligence on the part of other parties or a shortcut to discovery; it is a notice of other pending or contemplated actions of which all parties to a dispute might not be aware. See id.

Plaintiff confuses the purpose of R. 4:5-1(b)(2), which is “implement[ing] the philosophy of the entire controversy doctrine” and safeguarding “the rights of persons who are not parties to an action as framed,” with his own burden to exercise due diligence to investigate his case, identify those parties he is able to identify, and sufficiently describe those who he cannot identify but believes to exist. Compare Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R.

4:5-1(b)(2) (2025) (discussing the entire controversy doctrine), with Pressler & Verniero, cmt. 2 on R. 4:26-4 (discussing due diligence).

R. 4:5-1(b)(2) requires a party to disclose the name of a party it knows should be disclosed "because of potential liability." In its Answer, the Port Authority's then counsel, who was in the early stages of his investigation, stated the Port Authority "leases Newark Airport pursuant to a long-term lease agreement and the Port Authority controls only those portions of Newark Airport not owned, operated, maintained and controlled by others pursuant to lease, license, permit, contract or other written agreement or by virtue of their use and occupancy or operations thereat . . . ." Pa086-93. Thus, Plaintiff is incorrect that "at no point did [the Port Authority] suggest the QTA lot was leased to or operated by third-party entities." Pl. Br. 21. Plaintiff was unquestionably made aware there might be other parties involved on the premises. Plaintiff did nothing.

There are no other lawsuits or arbitrations known to counsel, or which are contemplated. Nor have there ever been such proceedings. Thus, when the Port Authority's Law Department filed its Answer the attorney properly certified there were no other actions known or contemplated. Pa092. Counsel also properly certified "all known necessary parties have been joined in this action." Id. (emphasis added).

Importantly, GardaWorld, which operates the QTA gate at the leased premises and would be in the best position to assert there was fault by some other party, and which Answered before the Port Authority, also certified it "is not aware of any other parties who should be joined in the action." Pa182. Moreover, GardaWorld answered discovery in July 2024 and identified the parties now at issue. Plaintiff, however, seems to take no issue with GardaWorld.

Incredibly, Plaintiff claims he was "deprived of any opportunity to investigate or name the proper defendants in time." Pl. Br. at 22. And, what is more, that the Port Authority "induced" his delay. Id. at 23. Nothing could be further from the truth. As set forth previously, Plaintiff could have investigated his incident pre-litigation but he did not. During the litigation, Plaintiff was told there are areas of the airport that may have other parties involved, he took no further steps. Indeed, a simple question to a supervisor or a Google search could have revealed the parties at issue.

It is also of no moment who insures or defends the entities in this case, despite Plaintiff's repeated references to same. There is absolutely no evidence the Port Authority was under some directive from an insurer not to disclose a party or that the insurer somehow designed a scheme to prejudice Plaintiff. The fact remains Plaintiff did not prove he reasonably endeavored to find the alleged tortfeasors, not that they were hidden from him.

The recognized purpose of the certification is to ensure parties are not blindsided by the entire controversy doctrine, not to alleviate the burden of a Plaintiff to diligently investigate his case. Plaintiff's equitable argument is legally misguided and factually dubious. Plaintiff was given every opportunity to identify other parties and never deprived of an opportunity to investigate. It has long been recognized that where "a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing" or "clean-hands." Bishop v. Bishop, 257 F.2d 495, 500 (3d Cir. 1958). Plaintiff cannot make that showing. Moreover, he cannot make a showing that the Port Authority did anything wrong to prejudice him. Accordingly, there is no "equitable" reason to alter Judge Turula's orders.

CONCLUSION

Judge Turula's Orders were correct because Plaintiff's pleadings were deficient and, even if they were not, Plaintiff failed to adequately support the underlying motions with competent proof evidencing diligence as is required by the Rules of Court. There was no misconduct on the part of the Port Authority allowing or demanding an "equitable" result that countenances Plaintiff's lack of diligence.

The orders should be affirmed.

KIRMSER, CUNNINGHAM & SKINNER
Attorneys for Defendants Port Authority of NY & NJ EWR
ConrRAC, LLC

By:_____
Timothy P. Malacrida

Dated: September 4, 2025

EDWARD McNEILL, JR. Plaintiffs, vs. PORT AUTHORITY OF NY & NJ, GARDAWORLD, JOHN DOES 1-10, JANE DOES 1-10, XYZ ENTITIES (1-10), Said names being fictitious and used to designate fictitious persons or entities whose real identities are presently unknown Defendants	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-002698-24 (AM-000398-24) ON APPEAL FROM SUPERIOR COURT OF NEW JERSEY LAW DIVISION Sat Below: Hon. Joseph A. Turula, Presiding Judge of the Superior Court of New Jersey Law Division Docket No. HUD-L-1864-23

REPLY BRIEF OF PLAINTIFF-APPELLANT EDWARD MCNEILL, JR.

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PRELIMINARY STATEMENT

This appeal arises from interlocutory orders denying Plaintiff's motion to amend his Complaint to substitute EWR Conrac, LLC and SIXT Rent A Car, LLC for fictitiously named defendants, and denying reconsideration of that ruling. The trial court's decisions reflect an overly rigid application of R. 4:26-4, disregard of the Port Authority's misleading conduct, inconsistent treatment of parties, and a denial of oral argument that deprived Plaintiff of due process.

Plaintiff's Amended Complaint did not merely list "John Does." It expressly alleged that fictitious defendants were responsible for the ownership, operation, control, leasing, maintenance, construction, repair, supervision, and inspection of the Newark Liberty QTA Lot and its hydraulic gate (Pa050–Pa054). These allegations were specific, functional descriptions of the category of actors later revealed in discovery to be EWR Conrac and SIXT (Pa102–Pa113; Da2–Da6). That is precisely the type of pleading the Supreme Court approved in *Farrell v. Votator Div. of Chemetron Corp.*, 62 N.J. 111, 120–21 (1973). The trial court erred by insisting on hyper-technical precision inconsistent with the remedial purpose of R. 4:26-4, and with cases like *Farrell id.* and *Lawson v. Dewar, 468 N.J. Super. 128 (App. Div. 2021).*Nor can Plaintiff be faulted for lack of diligence. The Port Authority's R. 4:5-1(b)(2) certification affirmatively misrepresented that all

necessary parties were joined (Pa223–Pa230). Only after the statute of limitations expired did the Port Authority disclose, in interrogatory responses, that EWR Conrac leased, and SIXT operated the premises (Pa102–Pa113). GardaWorld's interrogatory responses likewise identified these parties (Da2–Da6). Plaintiff diligently pursued discovery; it was the Port Authority's withholding of information uniquely in its possession that prevented timely amendment.

The trial court compounded the prejudice by denying Plaintiff oral argument on contested dispositive motions. Plaintiff filed substantive motions to amend (Pa143–Pa216) and for reconsideration (Pa003–Pa134), requested oral argument (Pa235–Pa237), and was advised he would be heard. Yet argument was denied. Under R. 1:6-2(d), oral argument is granted as of right on such motions. This Court has squarely held that denial of argument on substantive motions is reversible error. *Great Atl. & Pac. Tea Co., Inc. v. Checchio*, *335 N.J. Super. 495, 497 (App. Div. 2000); Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010).*

Respondent's reliance on *Triffin v. Am. Intern. Grp., Inc., 372 N.J. Super. 517 (App. Div. 2004),* is misplaced, as that case involved routine procedural motions unlike the dispositive rulings here.

Moreover, the trial court's inconsistent treatment of Plaintiff and GardaWorld underscores the inequity. While Plaintiff was barred from naming EWR Conrac and SIXT, the court simultaneously granted GardaWorld's motion to implead those very

entities (Pa242–Pa279). This arbitrary result is the definition of an abuse of discretion. *AC Ocean Walk, LLC v. Blue Ocean Waters, LLC*, 478 N.J. Super. 515, 523 (App. Div. 2024).

Finally, these errors were not harmless. Under R. 2:10-2, appellate courts disregard only those errors "clearly incapable of producing an unjust result." Denying amendment foreclosed Plaintiff's ability to sue the responsible entities, and denying oral argument deprived him of an opportunity to fully present his case. These were outcome-determinative rulings that prejudiced Plaintiff's substantive rights. They are reversible errors, not harmless ones.

The orders under review cannot be reconciled with the remedial purpose of fictitious party practice, the principles of fairness embedded in the Court Rules, or this Court's precedents. They should be reversed, and the matter remanded with instructions that Plaintiff be permitted to substitute EWR Conrac, LLC and SIXT Rent A Car, LLC as defendants.

LEGAL ARGUMENT

POINT I

THE COMPLAINT SUFFICIENTLY DESCRIBED THE FICTITIOUS PARTIES AND LEAVE TO AMEND SHOULD HAVE BEEN LIBERALLY GRANTED.

Rule 4:26-4 permits plaintiffs who are unaware of a defendant's true identity at filing to designate a fictitious name, provided they include "an appropriate description sufficient for identification." The Rule is remedial and must be liberally construed to prevent injustice. *Farrell supra*, 62 N.J. at 120–21.

Rule 4:24-6 further underscores this liberal approach:

> "A motion for leave to amend shall be freely given in the interest of justice."

Here, Plaintiff's Amended Complaint expressly alleged that fictitious parties were responsible for the "ownership, operation, control, leasing, maintenance, construction, repair, supervision, and inspection" of the QTA Lot and hydraulic gate (Pa050–Pa054). This was not boilerplate. It was a functional description of the precise category of actors later revealed to be EWR Conrac and SIXT (Pa102–Pa113; Da2–Da6).

The trial court's conclusion that the pleading was insufficient disregards both Rules and New Jersey's long tradition of liberally allowing amendments to reach the merits rather than defeat claims on technicalities.

POINT II

PLAINTIFF EXERCISED DILIGENCE; DELAY WAS CAUSED BY THE PORT AUTHORITY'S MISREPRESENTATIONS, NOT PLAINTIFF'S INACTION.

Respondent claims Plaintiff "offered no evidence" of diligence. The record proves otherwise:

a) Plaintiff filed a timely Notice of Claim (Pa020–Pa030; Pa014–Pa016).
b) The Complaint included fictitious designations (Pa050–Pa085).
c) The Port Authority's Answer falsely certified that all parties were joined (Pa223–Pa230).
d) Only in August 2024 interrogatories did the Port Authority disclose that the premises was leased to EWR Conrac and operated by SIXT (Pa102–Pa113; Pa107, Pa110).
e) GardaWorld's interrogatory answers likewise identified EWR Conrac and SIXT (Da2–Da6).

Respondent points to the fact that Plaintiff filed his motion four months after receiving GardaWorld's interrogatory answers (Da2–Da6). That argument is both misleading and legally irrelevant. By the time those responses were served, the two-year limitations period had already expired. Whether Plaintiff moved two days later or four months later, Respondent would have opposed substitution as untimely. The issue is not the length of the post-disclosure interval, but whether Plaintiff acted diligently before limitations expired. See *Lawson*, 468 N.J. Super. at 140.

On that question, the record is clear: Plaintiff pursued discovery but was affirmatively misled by the Port Authority's R. 4:5-1(b)(2) certification (Pa223–Pa230) and by its withholding of lease and service agreements (Pa193–Pa199).

Plaintiff cannot be penalized for delay when the very delay was engineered by the Port Authority's nondisclosure.

A. THE 4-MONTH INTERVAL AFTER DISCLOSURE IS LEGALLY IRRELEVANT

Respondent highlights that Plaintiff filed his motion four months after receiving GardaWorld's interrogatory responses (Da2–Da6). That argument is misplaced. By the time EWR Conrac and SIXT were identified, the two-year statute of limitations had already expired. Whether Plaintiff moved two days later or four months later, Respondent would have opposed substitution on the same grounds. The dispositive issue is not the length of the post-disclosure interval, but whether Plaintiff acted diligently **before the limitations period expired**. (emphasis added) See *Lawson v. Dewar*, 468 N.J. Super. 128, 140 (App. Div. 2021). On that point, Plaintiff's diligence is evident: he pursued discovery, but the Port Authority withheld and misstated critical facts.

B. GOOGLING DOES NOT ESTABLISH DILIGENCE

Respondent argues Plaintiff could have "Googled" the lot operator. That trivializes the diligence standard under R. 4:26-4. Courts measure diligence by whether plaintiffs reasonably pursued reliable information through appropriate means, not by speculative internet searches. See *Lawson id. at 140* (diligence judged by context of what was reasonably accessible). Even if internet references to EWR

Conrac or SIXT existed, they will not prove which entity had contractual responsibility for "ownership, operation, control, or maintenance" of the QTA Lot or hydraulic barrier. Only the Port Authority's leases and agreements could establish that responsibility (Pa193–Pa199; Pa102–Pa113). Those were withheld until after limitations expired.

C. EMAILS OR TEXTS WITH SIXT DO NOT ESTABLISH CONSTRUCTIVE KNOWLEDGE

Respondent also points to communications involving Plaintiff and SIXT. But these were incidental rental or administrative exchanges, not disclosures that SIXT was the contractual operator of the QTA Lot or responsible for the hydraulic barrier. By contrast, the Port Authority — which had exclusive access to the operative leases — affirmatively misrepresented in its R. 4:5-1(b)(2) certification that all necessary parties were joined (Pa223–Pa230). It is neither fair nor consistent with the remedial purpose of R. 4:26-4 to fault Plaintiff for failing to divine from informal correspondence what the Port Authority actively concealed.

D. THE TRUE CAUSE OF DELAY WAS THE PORT AUTHORITY'S MISCONDUCT

The diligence inquiry must focus on whether Plaintiff reasonably attempted to identify the correct defendants and whether any failure was caused by the defendants' concealment. See *Farrell v. Votator Div. of Chemetron Corp.*, 62 N.J.

111, 120–21 (1973). Here, the Port Authority's false certification and delayed disclosure — not Plaintiff's alleged inaction — were the reasons substitution was not sought sooner. Plaintiff's conduct was diligent; the Port Authority's was not.

POINT III

THE TRIAL COURT'S INCONSISTENT TREATMENT OF PLAINTIFF AND GARDAWORLD WAS ARBITRARY AND INEQUITABLE.

The trial court denied Plaintiff's motion to substitute (Pa141–Pa142), then permitted GardaWorld to implead EWR Conrac and SIXT (Pa242–Pa279). This inconsistency is indefensible. If the entities were proper third-party defendants for contribution, they were proper direct defendants for Plaintiff's claims. Such disparate treatment illustrates arbitrary decision-making and mandates reversal under R. 1:1-2.

POINT IV

DENIAL OF ORAL ARGUMENT WAS PREJUDICIAL, REVERSIBLE ERROR — NOT HARMLESS ERROR.

Respondent downplays the denial of oral argument. That ignores both Rule and precedent:

a) R. 1:6-2(d)**:** oral argument is a right on substantive, dispositive motions.
b) *Great Atl. & Pac. Tea Co., Inc. v. Checchio*, 335 N.J. Super. 495, 497 (App. Div. 2000): denial of oral argument on contested dispositive motion is reversible error.
c) *Palombi v. Palombi*, 414 N.J. Super. 274, 288 (App. Div. 2010): "The denial of oral argument when a motion has properly presented a substantive issue to the court for decision deprives litigants of an opportunity to present their case fully to a court. We do not retreat from that interpretation of the Rule."

Plaintiff's motions (Pa143–Pa216; Pa003–Pa134) were substantive and dispositive. Plaintiff requested oral argument (Pa235–Pa237). Chambers initially indicated argument would be heard, then denied it.

Respondent asks what difference oral argument would have made? The difference is critical: the Port Authority's opposition (Pa135–Pa139) raised misleading assertions. Plaintiff sought a sur-reply (Pa235–Pa237) but was denied both the sur-reply and argument. Oral argument would have allowed Plaintiff to correct those misstatements, highlight the fictitious party language in the Complaint (Pa050–Pa054), and expose the Port Authority's false R. 4:5-1(b)(2) certification (Pa223–Pa230). The trial court ruled without ever hearing those responses.

Under R. 2:10-2, only harmless errors are disregarded. These errors were outcome-determinative, not harmless, because they deprived Plaintiff of the opportunity to pursue the proper defendants.

Triffin supra, 372 N.J. Super. 517, cited by Respondent is distinguishable. That case concerned routine procedural motions. Here, Plaintiff was barred from suing the actual tortfeasors. That difference makes the denial of argument reversible error.

POINT V

EQUITABLE RELIEF IS APPROPRIATE TO PREVENT MANIFEST INJUSTICE.

Respondent claims equity is unavailable. That contradicts the Rules and precedent.

R. 1:1-2: provides in pertinent part that the Rules "shall be construed to secure a just determination" and may be relaxed "to secure a just determination."

Fictitious party practice under R. 4:26-4 is remedial, designed to prevent injustice. *Farrell supra*, 62 N.J. at 120–21.

The equities here are compelling. The Port Authority:

a) Misrepresented joinder under R. 4:5-1(b)(2) (Pa223–Pa230).
b) Withheld lease documents identifying EWR Conrac and SIXT until after limitations (Pa102–Pa113; Pa193–Pa199).
c) Opposed Plaintiff's amendment while GardaWorld was permitted to implead the same entities (Pa242–Pa279; Pa562–Pa563).

Respondent's reliance on *Mejia v. Quest Diagnostics, Inc.*, 241 N.J. 360 (2020), and *McGlone v. Corbi*, 59 N.J. 86 (1971), is misplaced. *Mejia* addressed contribution among existing defendants, not substitution under R. 4:26-4. *McGlone id.* involved joinder under R. 4:29, not relation-back or equitable relief where a defendant concealed information. Neither control here.

Equity cannot allow a public authority to benefit from its own misrepresentations.

POINT VI

THE TRIAL COURT'S ORDERS WERE AN ABUSE OF DISCRETION.

Discretion is abused when a decision is made "without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." *AC Ocean Walk, LLC v. Blue Ocean Waters, LLC*, 478 N.J. Super. 515, 523 (App. Div. 2024). The trial court abused its discretion by providing no rational explanation for treating Plaintiff differently from GardaWorld, departing from established policies of liberal amendment under R. 4:26-4 and relying on Port Authority's misrepresentations to foreclose Plaintiff's claims.

POINT VII

RESPONDENT'S COUNSEL'S DUAL ROLE UNDERSCORES THE UNFAIRNESS OF THE PROCEEDINGS.

When the Port Authority substituted counsel in June 2024, its defense was assumed by staff counsel employed by ACE American Insurance Company, the insurer for EWR Conrac (Pa100; Pa234; Pa237). Thus, the same insurer that would bear EWR Conrac's liability also controlled the defense of the Port Authority and opposed Plaintiff's attempt to substitute EWR Conrac as a defendant.

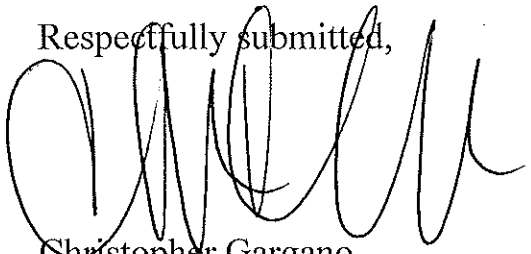
This dual role magnifies the inequity. Plaintiff was denied substitution not because of the law's requirements, but because an insurer's staff counsel defended its insured by blocking Plaintiff's claims against another of its insureds. Equity and fairness require reversal.

CONCLUSION

For all of these reasons, the trial court's orders should be reversed, and the matter remanded with instructions that Plaintiff be permitted to substitute EWR Conrac, LLC and SIXT Rent A Car, LLC as defendants.

Dated: September 18, 2025

Respectfully submitted,



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