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NEW MEADOWLANDS STADIUM COMPANY, LLC; NEW YORK JETS LLC; JETS STADIUM DEVELOPMENT LLC; NEW YORK FOOTBALL GIANTS, INC; and GIANTS STADIUM LLC, *Plaintiffs*, v. TRIPLE FIVE GROUP LTD.; TRIPLE FIVE WORLDWIDE DEVELOPMENT CO. LLC; AMEREAM LLC; AMEREAM DEVELOPER LLC; METRO CENTRAL LLC; and NEW JERSEY SPORTS AND EXPOSITION AUTHORITY, *Defendants.*	SUPERIOR COURT OF NEW JERSEY CHANCERY DIVISION BERGEN COUNTY DOCKET No. BER-C-156-13 CIVIL ACTION OPINION

Argued: August 23, 2013
Decided: August 26, 2013

Honorable Peter E. Doyne, A.J.S.C.

Robert J. Giuffra, Jr., Esq, of the New York bar, admitted pro hac vice and Marc DeLeeuw, Esq. (Sullivan & Cromwell, LLP), William J. Heller, Esq. (Senior Vice President and General Counsel of the New York Giants), and Richard Hernandez, Esq. (McCarter & English, LLP), appearing on behalf of the plaintiffs New Meadowlands Stadium Company LLC; New York Jets, LLC; Jets Stadium Development, LLC; New York Football Giants, Inc.; and Giants Stadium, LLC (William J. O'Shaughnessy, Esq. (McCarter & English, LLP), Mr. Giuffra, and Mr. DeLeeuw, On the Brief).

Peter J. Torcicollo, Esq., Frederick W. Alworth, Esq., and Kevin W. Weber, Esq., appearing on behalf of the defendant, New Jersey Sports and Exposition Authority (Gibbons P.C.) (Mr. Torcicollo, Mr. Alworth, Mr. Weber, and Damian V. Santomauro, Esq. (Gibbons P.C.), On the Brief).

Herbert J. Stern, Esq., Joel M. Silverstein, Esq., (Stern & Kilcullen, LLC) and Gage Andretta, Esq. (Wolff & Samson P.C.), appearing on behalf of the defendants, Triple Five Group Ltd.; Triple Five Worldwide Development Co. LLC; Ameream LLC; Ameream Developer LLC; and Metro Central LLC (Mr. Stern, Mr. Silverstein, Mr. Andretta, and A. Ross Pearlson, Esq. (Wolff & Samson P.C.), On the Brief).

Introduction

Before the court are motions to dismiss filed by counsel for defendant New Jersey Sports and Exposition Authority (the "NJSEA") and counsel for defendants Triple Five Group, Ltd., Triple Five Worldwide Development Co. LLC, Ameream LLC, Ameream Developer LLC, and Metro Central LLC ("Triple Five," "Ameream," and "Metro Central" when referenced individually; the "Developers" when referenced collectively; "defendants" when referenced collectively with the NJSEA). The NJSEA seeks to dismiss the first count of the complaint filed by plaintiffs New Meadowlands Stadium Company, LLC ("New Meadowlands"), New York Jets LLC (the "Jets"), Jets Stadium Development LLC ("JSDL"), New York Football Giants, Inc. (the "Giants" when referenced individually, the "Teams" when referenced with the Jets), and Giants Stadium LLC ("GSL" when referenced individually; the "Stadium Entities" when referenced with JSDL; "plaintiffs" when referenced collectively with New Meadowlands, the Teams, and JSDL), which alleges breach of contract pursuant to R. 4:6-2(a) for lack of subject matter jurisdiction, R. 4:6-2(e) for failure to state a claim, or, alternatively, to transfer all or part of the matter to the Appellate Division pursuant to R. 1:13-4.[1] Failing same, the NJSEA seeks to require plaintiffs to re-plead Count 1 with a more definite statement pursuant to R. 4:-6-4(a). The Developers similarly move to dismiss the complaint, which also alleges tortious interference, pursuant to R. 4:6-2(a) and R. 4:6-2(e).

[1] New Meadowlands is a joint venture between the Stadium Entities. Triple Five is a retail mall developer. Ameream is a special purpose entity created to own and operate the American Dream project. Metro Central is a special purpose entity created to own and operate the amusement park and water park of the American Dream project. The NJSEA, as set forth more fully below, owns and manages the operations of the Meadowlands.

Plaintiffs' "second" complaint was filed on May 31, 2013.[2] The defendants' motions to dismiss were filed on July 9, 2013, and, by way of a letter on that same date, this court notified counsel of a briefing schedule and set a return date of August 23, 2013.[3]

The NJSEA's and the Developers' motion to dismiss Count One is denied. The Developers' motion to dismiss Count Two is also denied. Plaintiffs' demand for an injunction to halt construction is stricken. The NJSEA's request for a more definite statement is denied.

Facts and Procedural Posture

On August 9, 2012, this court authored a lengthy opinion outlining the history of the matter. That opinion is incorporated herein as if set forth at length. In brief, plaintiffs brought a breach of contract action claiming that the Developers' proposed modification to Xanadu—a large retail and entertainment facility adjacent to plaintiffs' stadium—, which modification had been preliminarily approved by the NJSEA on October 13, 2011, violated an agreement signed by the Teams, Xanadu, and the NJSEA in 2006. Part of that agreement stated that any modifications to Xanadu that would have an "adverse effect" on the Teams' "development, use or operation of the Stadium Project Development Rights ("SPDR")" required prior written consent from the Teams.

In the August 9th opinion, this court dismissed plaintiff's complaint without prejudice as premature, holding that the NJSEA's administrative approval process must continue to conclusion before there need be any consideration of a purported breach. The Developer's

[2] The earlier action, New Meadowlands Stadium Co.-v. Triple Five Group, Ltd., 2012 N.J. Super. Unpub. LEXIS 1920, *1 (Ch. Div. August 9, 2012) ([hereinafter Meadowlands I]), was filed on June 22, 2012 (the "First Filed Complaint").

[3] On June 3, 2013, this court authored a letter to counsel indicating that it wished to meet with all counsel to discuss how to best serve the parties prior to "embarking on extensive motion practice." Counsel for the parties purportedly were unable to appear for various reasons including vacations and scheduling. As such, a modified briefing schedule was adopted with the August 23 return date. It had been hoped counsel would discuss the matter with the court prior to the filing of any anticipated motions, but such was not to be.

motion to dismiss plaintiff's tortious interference claim was denied.[4] In allowing the administrative process to continue, this court emphasized that although the NJSEA is properly tasked with determining whether to approve, disapprove, or modify the proposed modification, the court would determine the legal question of whether a breach occurred. That is, whether an "adverse effect," one possible consideration in the NJSEA approval process, would result from the proposed modification was a question that could only repose with the court. Meadowlands I, supra, at *35-36. This court emphasized that although it was proper to defer to the NJSEA's historical and statutorily provided expertise in dealing with issues affecting development of the Meadowlands, the issue of contractual breach and "adverse effects" was "***not*** 'placed within the special competence' of the NJSEA, and therefore the court [cannot] defer" to the agency on this question. Id. at *30-31, 39 (emphasis supplied). As agreed to by counsel, it was found to be inappropriate for a party to determine whether it breached its own contractual obligation.

Following the NJSEA's final approval of the proposed modification, and its purported factual finding that the modification "will not have an adverse effect on the Teams' [SPDR]," plaintiffs again brought a breach of contract action claiming the approval violated their rights pursuant to their 2006 agreement with the NJSEA. As many of the issues addressed in this court's earlier decision are again presented for determination, the following briefly discusses the facts leading up to the prior opinion and then details the facts and procedural history occurring after the date of the August 9, 2012 opinion as the prior decision extensively reviewed that which had occurred up to that date.

A. Prior History

a. New Jersey Sports and Exposition Authority

[4] The tortious interference claim was dismissed without prejudice by stipulation dated February 13, 2013.

Created in 1971 pursuant to the New Jersey Sports and Exposition Authority Law (the "Act"), N.J.S.A. 5:10-1 to 38, the NJSEA was created to "induce professional athletic teams" to locate their franchises in New Jersey by providing sufficient facilities and oversight for said franchises.[5] The NJSEA was provided with broad powers, including the powers to sue and be sued, "make and alter bylaws for its organization and internal management and for the conduct of its affairs and business," "acquire, lease as lessee or lessor, rent, lease, hold, use and dispose of real or personal property for its purposes," and "make and enter into all contracts, leases, and agreements for the use or occupancy of its projects or any part thereof or which are necessary or incidental to the performance of its duties and the exercise of its powers under the [Act]." Id. § 5(a), (c), (e), (f) & (h). The NJSEA was explicitly given the right to "establish, develop,

[5] Specifically, the Act's purpose states:

> The Legislature hereby finds and declares that the general welfare, health and prosperity of the people of the State will be promoted by the holding of athletic contests, horse racing and other spectator sporting events and of trade shows and other expositions in the State; that in order to induce professional athletic teams, particularly major league football and baseball teams, to locate their franchises in the State, it is necessary to provide stadiums and related facilities for the use of such teams, in addition to the facilities for horse racing and other spectator sporting events and to undertake the projects herein described; that such projects would provide needed recreation, forums and expositions for the public.
>
> It is hereby further found and declared that additional facilities are needed in the State to accommodate trade shows and other expositions in order to promote industry and development in the State and provide a forum for public events.
>
> The Legislature further finds and declares that the location of a sports and exposition complex in the Hackensack meadowlands would stimulate the needed development of said meadowlands.
>
> The Legislature has determined that to provide for the projects, including the establishment and operation of the needed stadiums and other facilities for the holding of such spectator sports, expositions and other public events and uses, a corporate agency of the State shall be created with the necessary powers to accomplish these purposes.
>
> The Legislature further finds that the authority and powers conferred under this act and the expenditure of public moneys pursuant thereto constitute a serving of a valid public purpose and that the enactment of the provisions hereinafter set forth is in the public interest and is hereby so declared to be such as a matter of express legislative determination.
>
> [N.J.S.A. 5:10-2]

construct, operate, acquire, own, manage, promote, maintain, repair, reconstruct, restore, improve and otherwise effectuate, either directly or indirectly through lessees, licensees or agents, a project to be located in the Hackensack meadowlands." Id. § 6(a)(1). In addition, the Legislature conferred on the NJSEA the authority:

> To determine the location, type and character of a project or any part thereof and all other matters in connection with all or any part of a project . . . [except] that the [NJSEA] shall consult with the Meadowlands Commission ["NJMC"] before making any determination as to the location, type and character of any project under the jurisdiction of the [NJMC].
>
> [Id. § 5(x).]

With respect to projects affecting the Meadowlands, the Legislature provided:

> It is the express intent of the Legislature that the [NJSEA] in undertaking the meadowlands complex shall consult with the [NJMC] and the Department of Environmental Protection ["NJDEP"] with respect to the ecological factors constituting the environment of the Hackensack meadowlands to the end that the delicate environmental balance of the Hackensack meadowlands may be maintained and preserved.
>
> [Id. § 23.]

Lastly, the Legislature provided the Act should be liberally construed so as to give effect to the Legislature's purpose. Id. § 26 ("The act shall be construed liberally to effectuate the legislative intent and the purposes of the act as complete and independent authority for the performance of each and every act and thing herein authorized and all powers herein granted shall be broadly interpreted to effectuate such intent and purposes and not as a limitation of powers.").

b. Original Lease Agreements and Development of Xanadu

On August 26, 1971, the Giants entered into a thirty-year lease[6] with the NJSEA by which the Giants agreed to play their home games at a new stadium to be constructed at the Meadowlands called "Giants Stadium." The Jets entered into a similar twenty-five-year lease on March 15, 1984. Both leases included a clause which provided that the lessor would not permit the use of other "areas or facilities of the Sports Complex," which would interfere with the lessee's use of the Stadium, parking, and pedestrian areas, without the consent of the lessee.[7] Additionally, other events in the Complex were not to commence within three hours after the estimated time of football games.

In 2002, the NJSEA sought developers to improve the Sports Complex. A joint venture with Mills Corporation and Mack-Cali (collectively "MMC") was selected in February 2003 to construct Xanadu, a proposed 4.8 million square foot entertainment, retail, office, and hotel project. NJSEA and MMC entered into a "Redevelopment Agreement" on December 3, 2003 governing the construction of Xanadu. The terms of the agreement were binding on successors to either party.

In order to control the development and construction of Xanadu, MMC was required to obtain approvals from the NJSEA for a "Master Plan," including "Parking Component Uses," and sixteen other prerequisites pursuant to section 6.2 of the Redevelopment Agreement. MMC was required to submit evidence to demonstrate "Administrative Completeness," and, if satisfactory, the submissions would then be reviewed for "Technical Completeness." Once Technical Completeness was demonstrated, the NJSEA would commence its "substantive review." The NJSEA would then recommend approval to the NJSEA's Board of Commissioners (the "NJSEA Board") or disapprove the Master Plan.

[6] The lease was amended to extend the lease term to 2026 in 1995.
[7] This clause was denominated section 8.7 in the Giants lease and section 5.4.2 in the Jets lease.

Following approval of the Master Plan, the Developers were permitted to request a modification by submitting a revised Master Plan, which would be subject to NJSEA approval as either a "minor" or "major" modification pursuant to section 6.2(f)(i) of the Redevelopment Agreement. It appears undisputed that the modification at issue is a "Major Modification."[8] Approvals similar to those required pursuant to the original Master Plan approval process are required for any Major Modification with final approval determined by a legally binding vote of a majority of the NJSEA Board.

The NJSEA Board agreed to the MMC proposal of a 5.2 million square foot entertainment, office complex, hotel, and baseball park on September 8, 2004. Groundbreaking occurred on September 29, 2004. A Master Ground Lease was executed on October 5, 2004.

c. Initial 2005 Lawsuit

After reviewing the approved Xanadu Master Plan, the Giants concluded that the proposed development would increase traffic congestion and parking difficulties during game days. Accordingly, on April 5, 2005, the Giants filed a complaint against the NJSEA and MMC seeking injunctive and declaratory relief to halt construction of Xanadu pursuant to section 8.7 of their lease with the NJSEA. Following settlement discussions, the complaint was dismissed without prejudice on June 22, 2006, after which the Teams, NJSEA, and MMC executed the

[8] A "Major Modification" is defined as:

> [A]n amendment or modification of the Approved Master Plan that proposes (a) a material increase in the size of a Component, (b) a complete or partial change from one Component Use to a different Component Use (e.g. Office Component to Hotel Component), (c) a material increase in the square footage . . . devoted to any Component Use or a material reallocation of square footage . . . devoted to a use within a Component (e.g., a replacement of entertainment space with retail space), (d) a material modification of the exterior appearance of the Project, and/or (e) such other material modification to the Project or a Component Use (or Phase thereof) which, if effectuated, would cause the Project or such Component (or Phase thereof) to be materially and adversely inconsistent with the Approved Master Plan.
>
> [Schedule 1.1 to Redevelopment Agreement]

"Cooperation Agreement" on November 22, 2006. Pursuant to the Cooperation Agreement, the Teams committed to play their home games at the Meadowlands for forty years, with the possibility to extend the term to ninety-eight years at a new, privately funded, $1.6 billion stadium (now named MetLife Stadium). The Agreement set forth a detailed plan for traffic and parking concerns including, among other conditions, the number of spaces available for the Teams' patrons on game days.

Pivotally, for purposes of this and the prior suit, Section 1 of the Cooperation Agreement provides:

> Any amendments, modifications and/or waivers with respect to the Xanadu Project that would have an adverse effect on the development, use or operation of the Stadium Project Development Rights . . . shall require the prior written consent of the Stadium Related Entities.
>
> [Cooperation Agreement § 1, attached as Ex. 1 to Pls.' Opp.]

The Teams also received a lump sum of $15 million and agreed to waive any objection to the Xanadu project, including those relating to traffic, parking,[9] and ingress/egress. Additionally, Section 8.7 of the Giants lease, and the corresponding section of the Jets lease, was incorporated into Section 3 of the Cooperation Agreement. Pursuant to Section 3, the Teams agreed that Xanadu does not violate the Teams rights under Section 8.7; enforceability of the section was limited to Sunday NFL home game days; Xanadu was deemed not to be in competition or cause scheduling conflicts with the use of the stadium as set forth in Section 8.7; and to prevail in a suit the Teams would have to demonstrate that traffic and fans ingress to and egress from the Sports Complex as a result of the operation of the project were worse than experienced on average at the Sports Complex during the 2004 NFL regular season on game days. The Teams and

[9] The Developers were to provide 4,085 parking spaces for exclusive use by the Teams' patrons and no fewer than 10,000 spaces for non-exclusive use.

Developers agree that for purposes of this action, Section 1 and not Section 3 of the Cooperation Agreement is implicated.

Additionally, and importantly, the Cooperation Agreement included a forum selection clause, which states: "The parties hereto submit to the jurisdiction of and select the state courts of the State of New Jersey or the Federal District Court for the District of New Jersey as the ***exclusive*** forum for the determination of all disputes under this Agreement." (Certification of Robert J. Giuffra, Ex. 1 § 8(c) ("Giuffra Cert.")) (emphasis supplied).

Following the 2006 Cooperation Agreement, MMC faced financial difficulties and turned the project over to Colony-Dune, which encountered financial problems of its own in 2009, halting construction of Xanadu.

d. American Dream Proposal and Administrative Process

On May 3, 2011, Triple Five and the State of New Jersey announced a proposal to turn Xanadu into a "premier tourism, entertainment and retail destination," renaming it "American Dream at Meadowlands" ("American Dream"). It was anticipated the project would be completed by the end of 2013 in time for the Super Bowl to be hosted at MetLife Stadium on February 2, 2014. Triple Five claimed that American Dream would eventually total 7.5 million square feet and attract 55 million visitors annually, making it the largest mall in the world.

On September 29, 2011, Triple Five submitted to the NJSEA a proposed plan incorporating an indoor amusement park and water park ("AP/WP") to the original Xanadu Master Plan. The AP/WP was to be located on a separate 21.75 acre parcel, dubbed the "Radio Tower Parcel,"[10] on the south side of the partially completed Entertainment and Retail

[10] On April 28, 2011, Metro Central acquired title to the 21.75 acres. The property was not part of the initial Cooperation Agreement or, according to the Developers, any other encumbrance on the development related to Xanadu.

Component ("ERC").[11] The NJSEA Board granted conditional approval to the proposal on October 13, 2011. See Resolution 2011-16. This "Proposed Major Modification" was updated and submitted to the NJSEA on September 7, 2012, including detailed information on supplemental planning, design, and technical detail regarding the AP/WP. Triple Five has been and continues to work to obtain the necessary State and Federal development permits to advance American Dream.[12] On June 5, 2012, the Developers reached a "tentative deal" with Deutsche Bank for a $700 million loan in conjunction with the American Dream project.

The AP/WP is to connect to the ERC by way of a connector bridge. The Proposed Major Modification includes a total of 639,000 square feet. Two service access points will be connected to the AP/WP from the East Peripheral Road[13] for deliveries, building systems, and a circular access road, which will restrict public access. According to the design, the only way for the public to enter the AP/WP will be by way of the existing ERC buildings. Accordingly, the NJSEA engineers anticipate the impact on the Meadowlands Sports Complex during construction will be negligible, presumably intending to avoid any adverse effects on the teams operation of MetLife Stadium. Triple Five intends to coordinate efforts with the Teams in order to minimize any potential concerns during construction.

As noted previously, the Proposed Major Modification is subject to the same procedures and approval processes as the original Xanadu Project, the Teams' master plan for MetLife Stadium, and other similar projects in the Complex. Importantly, the AP/WP is the only addition to the original Xanadu Master Plan, which has already been approved by the Teams and the

[11] The ERC was originally conceived as and is comprised of approximately 2.7 million square feet of entertainment/retail space.

[12] Regulatory approvals include the U.S. Army Corps of Engineers, New Jersey Department of Environmental Protection ("NJDEP"), the New Jersey Meadowlands Commission ("NJMC"), and the NJDOT. Approvals were obtained from NJDEP and NJMC on June 22, 2012, which approvals were granted without the need for traffic or transportation improvements. The NJDOT revised traffic permit including the AP/WP was granted on May 10, 2012. According to defendants, all other pending permits have been secured as of the date of this opinion.

[13] The East Peripheral Road runs south along the west side of the ERC.

NJSEA. Accordingly, the key issue is whether the addition of the ***AP/WP*** will have an adverse effect on the Teams' SPDR as set forth in Section 1 as opposed to the already approved Xanadu project, which was agreed to by the Teams pursuant to the Cooperation Agreement. As it appears that construction of the AP/WP may have little effect, and as the AP/WP is only accessible through the ERC, it is necessary to look primarily at how traffic patterns, parking, and overall ingress and egress from the Complex will be impacted by the addition of the AP/WP. It also bears noting, however, that it is not entirely clear from plaintiffs' complaint what specific SPDR purportedly are adversely implicated by the AP/WP.

e. Prior Litigation

On June 22, 2012, plaintiffs filed the First Filed Complaint. As discussed, plaintiffs claimed the NJSEA breached the Cooperation Agreement by conditionally approving the construction of American Dream, a Major Modification, without first seeking the Teams' written consent pursuant to Section 1 of the Agreement. Plaintiffs claimed that given the conditional approval of the proposed modification, final approval was a "foregone conclusion." The First Filed Complaint also sought relief against the Developers for tortious interference with the Teams' contract with the NJSEA. Plaintiffs demanded an injunction to stop the construction of American Dream. On June 28, 2012, the NJSEA informed plaintiffs, for the first time, that there would be a review and hearing by the NJSEA's Master Plan Committee ("MPC") of the proposed modifications, discussed in detail below, prior to any final approval of American Dream. As noted above, this court issued its opinion on August 9, 2012, dismissing plaintiffs complaint without prejudice as, prior to final approval of American Dream by the NJSEA, it could not be determined whether plaintiffs' contractual rights, pursuant to Section 1, were adversely effected. Specifically, it was noted that there were "no competent proofs that the

NJSEA would not sincerely and meaningfully undertake its responsibilities" in the ongoing process to determine if approval was appropriate or that plaintiffs would not be able to actively participate in that process. Meadowlands I, supra, at *29-30.

In the opinion, this court emphasized, however, that there were two distinct inquiries at issue: 1) the approval, disapproval, or modification of the proposed modification; and 2) whether an approved modification would have an "adverse effect" on plaintiffs. Id. at *34. Importantly, it was stated that this distinction was "critical" as the latter could ***only*** be determined by this court. Id. It was further set forth that even should the resulting effects of a proposed modification factor into the NJSEA's decision regarding approval of American Dream, no adverse effects finding would be binding as this court "alone has the authority to decide the contractual, i.e., legal, question of whether plaintiffs' consent rights have been violated by the NJSEA's approval of a proposal which adversely affects plaintiffs." Id. at *34-35. As the determination of "adverse effect" was, as this court held, a legal question, it was not within the "special competence" of the NJSEA, and accordingly this court need not defer to any such finding by the NJSEA. Id. at *35-36, 39.

It was noted if the court were to accept the factual findings of the NJSEA as to adverse effects, this would essentially allow the NJSEA to determine if it breached its own contract. Id. at *39. To that end, at oral argument, this court specifically asked counsel for the NJSEA whether the NJSEA could make a binding determination regarding plaintiffs' contract rights:

> THE COURT: Isn't it clear the current hearing cannot dispositively determine whether approval of the proposed major modification would be a violation of plaintiff's contract rights . . . ?
>
> [NJSEA Attorney]: That's correct, Judge.
>
> * * *

> THE COURT: You would not suggest, would you, that your body would have the temerity to determine whether it, itself, has breached its contract?
>
> [NJSEA Attorney]: Absolutely not.
>
> THE COURT: No, you wouldn't have that temerity?
>
> [NJSEA Attorney]: I would not suggest that our body can determine whether it has breached its own contract.
>
> [Giuffra Cert., Ex. 3 at 32, 34-35]

Counsel for NJSEA also stated, "to be perfectly clear," the Authority had neither the ability, nor the intent, to determine if it breached its own contract through the Master Plan Subcommittee process. Id. at 43. The NJSEA's reply brief in the initial action further noted the NJSEA neither intended to resolve the parties' contract claims nor to '"stand as judge and jury over whether the NJSEA has breached its own contract."' (Giuffra Cert., Ex. 4 at 10-11.) Counsel for the NJSEA did indicate that the MPC would make an adverse effect determination, while simultaneously indicating it would not make a determination of whether it breached its own contract. (Giuffra Cert., Ex. 3 at 33-34; Ex. 4 at 11.) Accordingly, this court's opinion repeatedly stated that regardless of the NJSEA's findings as to adverse effects, this court alone must decide what adverse effects, if any, would result from the modification as the breach of contract action turns on this finding. Meadowlands I, supra, at *35-37, 39-42.

Finally, and of import to the instant action, it was noted that unequivocal deference to an NJSEA finding that no adverse effects are present would allow defendants to "procedurally manipulate the court," whereby plaintiffs would either be forced to appeal such a finding to the Appellate Division, which would review the finding pursuant to the "arbitrary, capricious, or unreasonable" standard as opposed to a preponderance standard, or plaintiffs would have to bring a second action—as they have—whereby this court would have to rely on the NJSEA's factual

determination of no adverse effects—essentially a de facto legal determination—pursuant to the doctrine of primary jurisdiction. Id. at fn. 13.

B. Post-Opinion Administrative Proceedings

Subsequent to the August 9th opinion, the NJSEA continued with its administrative process to determine whether the addition of the AP/WP should be approved. The NJSEA apparently also elected to determine whether the AP/WP would have an adverse effect on plaintiffs' SPDR. This process included a review by the Master Plan Committee ("MPC"), which is composed of five (5) of the sixteen (16) members of the NJSEA Board and NJSEA staff. The MPC designated NJSEA Senior Vice-President and General Counsel Ralph Marra, Esq. ("Marra") as the hearing officer to review the parties' submissions and provide a report and recommendation to the MPC regarding the proposed modifications. In an effort to ensure Triple Five and the Teams were provided with all necessary information, upon request, the NJSEA provided the parties with all its files relating to the Xanadu and American Dream projects. This information included 77,000 pages of documents.

Triple Five provided an updated version of its original Proposed Major Modification submission on August 6 and September 7, 2012.[14] The Teams provided their submission on October 3, 2012. Each party's submission was disseminated to the other following receipt by the NJSEA. On October 10, 2012, the MPC held a hearing at its offices at the Meadowlands Sports Complex. Triple Five and the Teams offered oral presentations and were questioned by Marra. Specifically, the parties provided presentations from their respective traffic and parking consultants.[15] James Simpson ("Simpson"), Commissioner of the NJDOT, also provided a statement regarding Triple Five's proposed modifications. Simpson discussed the investments

[14] Triple Five's original submission was made on September 27, 2011.
[15] The Teams retained Sam Schwartz Engineering ("SSE") and AECOM Technical Services, Inc. ("AECOM"); the Developers retained TRC Engineers, Inc. and Walker Parking Consultants ("Walker").

that New Jersey's transportation agencies and private parties have made to improve mobility in and around the Meadowlands. Simpson noted that $800 million in transportation investments were made in recent years, $300 million of which were agreed to as part of the Cooperation Agreement.

After the hearing, the parties were asked to provide additional information and documentation. Counsel for the Teams and Triple Five each submitted a supplementary submission on October 26, 2012. On November 27, 2012, the parties were advised that the proposed modification would be considered by the MPC and NJSEA Board, and that final submissions must be submitted by December 3, 2012. The Teams made no further submission, relying on prior submissions; Triple Five provided a further submission, including supplemental reports from its traffic and parking consultants. As there was a significant disparity in the parties' experts' reports, the NJSEA chose to retain its own independent traffic consultant, Jacobs Engineering ("Jacobs"). Jacobs reviewed and summarized the traffic analyses submissions of the parties. This review included an "observational meeting" on November 29, 2012, which was attended by counsel for the parties and their respective traffic consultants. Jacobs issued findings and a recommendation regarding the traffic analyses in a report dated May 14, 2013.

Following the receipt of all party submissions and the report from Jacobs, MPC review was closed. On May 15, 2013, the NJSEA issued a public meeting notice for a special hearing scheduled for May 17, 2013. Marra issued his Report and Recommendations ("R&R") on May 16, 2013.[16] On May 17, 2013, the MPC adopted the R&R, issuing Resolution number 2013-13. On that same date, the NJSEA held its scheduled meeting and approved the proposed major

[16] It may be worth noting that Jacobs' report was only submitted two days prior to Marra's R&R and one day prior to the NJSEA's notice of its final approval meeting. The R&R makes several references to the report. (Marra R&R at 22, 57.)

modifications in their entirety, but included some minor conditions on the project including providing additional information to the NJSEA as the project developed.

a. Proposed Modification and Traffic Reports

As previously noted, as part of the NJSEA process to determine whether it should approve the proposed modifications to the original project, approved by the Teams pursuant to the Cooperation Agreement, the Developers, the Teams, and the NJSEA each hired their own traffic consultants to demonstrate what impact, if any, would occur should the proposed modification be approved. Each report will be discussed individually.

i. Triple Five Traffic Reports

In order to determine any potential impact to traffic conditions created by the addition of the AP/WP, Triple Five's traffic consultants, TRC Engineers, Inc. ("TRC"), submitted a Traffic Impact Assessment ("TIA Report") on October 25, 2011.[17] TRC states that the TIA Report used "standard traffic modeling criteria" and data from other Triple Five malls. The TIA Report also compared data from the 2004 Study, see, supra, at fn. 18, and concluded that the roadway improvements constructed for Xanadu improved traffic conditions in the Sports Complex area. It was thus concluded the additional traffic from the AP/WP would, according to TRC, not be significantly increased from that approved by the Teams pursuant to the Cooperation

[17] Prior to the 2011 Report, TRC performed a Traffic Impact Study in 2004 ("2004 Study") in accordance with NJDOT guidelines and regulations, which was used for the Xanadu Project. The 2004 Study demonstrated how existing roads, with certain improvements, would accommodate the traffic volume required for the Xanadu Project, factoring in projected regional growth and increased volume from the planned development at the Meadowlands. The NJDOT approved the 2004 Study in 2006 and issued a Major Access Permit. The proposed improvements were completed and are operational, costing the original developers $60 million. Based on an additional report completed by Edwards & Kelcey in December 2004 on behalf of the NJSEA and NJDOT, additional improvements were suggested and have been completed or are in progress, according to TRC, at a cost of over $300 million. A $144 million Meadowlands Rail Line was also added in 2009, providing direct mass transit access to the Meadowlands Sports Complex from Secaucus Junction. According to TRC, this rail line has reduced traffic volumes on game days by over 12%. In 2006, the Teams and the Developers executed the Cooperation Agreement, accepting the project with the traffic projections absent the latter two improvements.

Agreement.[18] The TIA Report reached this conclusion by generating "projected trips" for the AP/WP during the peak hours established in the 2004 Study.

TRC concluded that the AP/WP would generate "10 additional trips during the morning peak hour, 58 additional trips during the afternoon peak hour and 277 additional trips during the Saturday peak hour." (Marra R&R at 35.) TRC estimated that the AP/WP would create between one-half of one percent (.5%) and three and a half percent (3.5%) of the total traffic generated by the American Dream project. The NJDOT approved TRC's methodology and issued a Major Access Permit for the AP/WP on May 9, 2012. Marra similarly was satisfied with TRC's traffic studies.

Further, the TIA Report incorporated an analysis of the AP/WP's impact on traffic during peak Stadium traffic on Sunday afternoon or evening NFL game days.[19] A "Stay-Away" factor was included for game days, anticipating that visitors would avoid American Dream at these times. A "Mass-Transit" factor of 12.9% was also included for visitors arriving by train or bus. It was noted that mass transit use is often higher on game days, reaching approximately 20-25%. Additionally, a 25% "Captive Trip" factor was added to account for those visiting the ERC who are predicted to also visit the AP/WP during their stay. The TIA Report concluded that "at worst," an additional 31 cars would exit the Meadowlands Sports Complex during peak travel hour on Sunday NFL game days, and "at worst," 35 additional cars on the "rare" Saturday NFL game days.

[18] A "significant increase in traffic" is defined as vehicular use exceeding the previously anticipated two-way traffic generated to and from a site by 100 movements during the peak hour of the highway or development and 10% of the previously anticipated daily movements. See N.J.A.C. 16:47-1.1.

[19] This analysis was performed by Walker on behalf of Ameream ("Walker Report"). The Walker Report compared data from locations similar to the proposed American Dream, including Nickelodeon Universe Amusement Park at the Mall of America in Minnesota and the World Water Park located at West Edmonton Mall in Canada. The analysis compared "ridership data" to project the number of "new vehicular trips" expected to enter the AP/WP.

Finally, the TIA Report added additional mitigating factors including game day charter bus services, express bus services from Port Authority Bus Terminal, a "Dispersal Effect,"[20] the fact that the approved Office, Hotel, and Ballpark portions are not currently being constructed, and changes to the Meadowlands Racetrack and Izod Center.[21]

ii. Plaintiffs' Traffic Reports

In response to the Developers' traffic report, the Teams hired separate consultants to prepare their own traffic analysis report. Based on their report, the Teams argue that the AP/WP "fundamentally changes" the Xanadu Project, which would "unquestionably" overwhelm the Meadowlands Sports Complex on NFL game days and other event dates at MetLife Stadium. The Teams argue that this will cause an "adverse effect" on the Teams and their fans.

The Teams' report was prepared by Sam Schwartz Engineering and AECOM (the "Teams Report"), which analyzed the impact of American Dream to the Meadowlands. In sum, the Teams Report concludes that American Dream would add significant delays to traffic flow on NFL game days and would often cause "gridlock"[22] at the conclusion of NFL games. The Report also projects substantial parking shortages on NFL game days, which the Teams contend would lead to further traffic congestion for drivers looking for a parking space. The Report concludes that American Dream would have an adverse effect on traffic and parking at the Meadowlands.

In order to reach its conclusions, the Teams Report used a "traffic simulation model" by obtaining, from the Teams, actual traffic, transit, parking, and attendance data from a

[20] A "Dispersal Effect" anticipates that NFL patrons will visit American Dream before and after NFL games further reducing traffic at peak NFL game day times.
[21] According to TRC, changes include downsizing the Racetrack grandstand capacity from approximately 20,000 to 6,000-7,000, and the fact that the Nets and Devils no longer play at the Izod Center, diminishing the number of events at the Arena.
[22] No traffic movement at all.

Washington Redskins at New York Giants game at 1:00 p.m. on Sunday, December 18, 2011. The data was adjusted to produce a "close game" scenario, which would result in a different temporal distribution of fan departures. According to the analysts, a similar traffic simulation model to the one they developed exists that is an "industry-accepted, complex traffic engineering tool" used to calculate the movement of individual vehicles through a roadway network. (Certification of Gage Andretta, Ex. 45 at 6. ("Andretta Cert.").)[23]

The traffic simulation model, according to the Teams' analysts, provided a "baseline" of estimated traffic conditions at the Meadowlands on Sunday NFL game days, accounting for data from American Dream or Xanadu visitors. The model calculates two primary results: "Clearance Time" and "Travel Time."[24] To make estimates more conservative, the Teams Report used ideal conditions—no inclement weather, accidents, road closures, etc.—at the Meadowlands and surrounding roadways. The Report also included assumptions about "traffic management" techniques and created three scenarios ranging from least to most intrusive, denominated TM1-TM3, respectively.

The Report then used projections provided by the prior and current Developers as to traffic and parking at Xanadu and the American Dream as expected when either is "fully operational." For the Xanadu project, the 2004 Study was used. The Teams Report also adjusted for the "Stay-Away" factor on NFL game days, using the same numbers as the TIA Report. The Teams Report also adjusted for a 33% trip reduction for Xanadu as a result of Bergen County's "Blue Laws."[25] The Report projects 30.4 million annual visitors to Xanadu.

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[23] The traffic simulation model, according to plaintiffs' analysts, accounts for origin-to-destination travel patterns, traffic volumes, interactions between vehicles and the physical roadway system, and vehicle dynamics such as accelerating, decelerating, and standing in a line.

[24] According to the Teams Report, "Clearance Time" is the amount of time it takes a specified percentage of parked Stadium guests to leave the Sports Complex. "Travel Time" is the amount of time it takes from when a visitor enters his/her vehicle to when the vehicle reaches the highway.

[25] These laws require the closure of retail stores on Sunday, not including restaurants and entertainment venues.

For American Dream, the Teams report used Triple Five's projection on their public website that American Dream will attract more than 55 million visitors per year. The same "Stay-Away" factor, as noted above, was also used, as was the percent reduction from Blue Laws.

Using TM3, the traffic simulation model reportedly resulted in "gridlock" during three of the five simulations run for American Dream during the specified time. The other two reportedly resulted in an increased travel time of forty-eight (48) minutes on the "East Side" of the Meadowlands. Eighty-five percent (85%) clearance was not achieved until 207 minutes after the end of the NFL game, which is, according to the Teams, "typically" achieved after 107 minutes.

According to the simulation, using TM1 results in gridlock for patrons parking at the East-Side and Stadium-Side lots for both Xanadu and American Dream. TM2 reportedly failed to achieve 85% clearance by the end of the simulation for American Dream, and took 180 minutes for Xanadu, while TM3 similarly failed to achieve 85% clearance for American Dream, and took 122 minutes for Xanadu. Exit from the East-Side for TM2, during the two simulations that did not result in gridlock for American Dream versus the successful exit from Xanadu, took 81 and 76 minutes respectively, whereas exit from the Stadium-Side took 65 and 61 minutes respectively. Using TM3, in the two simulations that did not result in gridlock for American Dream, it took 75 and 68 minutes respectively to exit from the East-Side, and 52 and 49 minutes respectively from the Stadium-Side.

Regarding parking, the Teams Report noted that there are 6,775 spaces available to Xanadu/American Dream patrons on NFL game days. Using the trip-generation figures applied to the traffic patterns and a "length of stay" factor, the Teams analysts concluded that a parking shortfall of approximately 3,000 to 17,000 spaces will occur on NFL game days.

Finally, in rebuttal to the TRC and Walker Reports, the Teams Report states that those Reports improperly ignored "synergies" and looked to only one component of the American Dream and not the impact of a "mixed-use" development contemplated by American Dream. The Teams Report uses this concept to argue that the addition of the AP/WP creates a "new product," which the prior Reports failed to analyze as a whole. Further, the Teams Report argues that the improvements made since 2006 should not have been considered as mitigating factors in the TRC and Walker Reports. Instead, the Teams Report argues that their analysis of what would occur ***now*** if Xanadu or American Dream were placed in full operation, should be the baseline. Lastly, the Teams Report argues that the prior reports should have used a model to show how traffic will actually flow with a fully operational American Dream.

iii. The Developers Rebuttals

Walker's rebuttal of the Teams Report notes numerous key problems with the Teams Report. First, Walker states that the simulation model neither calculates parking demand for the AP/WP nor models the addition of the AP/WP to Xanadu. Second, it is noted the simulation model uses the Developers 55 million person annual visitor estimate, which is only anticipated with a fully built project which has been neither planned nor proposed. Third, Walker claims the simulation model is not in accordance with any industry standard methodology for determining parking demand, including the standards noted in the report. Fourth, Walker states the simulation model ignores the Master Plan documents for Xanadu as approved by the Teams and the NJSEA. Finally, Walker notes the Teams Report "significantly"[26] overestimates parking demand even if the 55 million annual visitor baseline is used.

[26] According to Walker, the ratio used by the Teams Report is two to three times greater than the "widely accepted" parking ratio for shopping centers, and is one and a half to two times greater than the parking generation rate for the Mall of America.

TRC similarly rebuts the Teams Report. First, TRC also notes that the Teams Report uses non-industry standard traffic generation procedures.[27] Second, TRC similarly notes that the 55 million visitor estimate used by the Teams is based on a future vision of a 7.5 million square foot development, applying this estimate to the currently planned 2.8 million square foot development. Third, it is claimed that none of the traffic studies or traffic/parking management plans measure traffic by the number of visitors. According to TRC, traffic projections based on annual visitor estimate is neither appropriate nor an industry standard. Fourth, TRC states that the "additional trips" approach based on the addition of the AP/WP was required and approved by NJDOT. Finally, and notably, TRC notes that the conservative trip estimates for Xanadu in 2004 combined with the "over $500 million" in roadway infrastructure and transit improvements will offset additional trips associated with the AP/WP addition.

iv. NJSEA Traffic Reports

In order to provide a more "neutral" analysis, an independent third traffic consultant, Jacobs, was retained by the NJSEA. Jacobs reviewed both the Developers' and the Teams' Reports and submitted a separate Report, first analyzing the assumptions made by the other consultants.[28] Jacobs notes that the other consultants made significantly different assumptions, leading to the radical differences in their conclusions.[29] Jacobs points out that the Teams' project the addition of the AP/WP will generate traffic volumes up to 3.5 times higher than the previously approved project during peak NFL game day travel periods. It is Jacobs' opinion that the Teams' analysis methodology, and accordingly their conclusions, is "fundamentally flawed."

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[27] As noted supra, the Teams used a model "similar" to industry-standard models.

[28] E.g., estimating the increase in trips from the AP/WP, effect of Blue Laws, distribution of annual "visitorship," etc.

[29] As an example, Jacobs points out that the Developers project that 1,903 vehicles will enter the Complex from 2:30 to 3:30 p.m. on a typical 4:00 p.m. NFL game day, while the Teams project that 6,937 vehicles will enter the Complex from 2:00 to 3:00 p.m. on a typical 4:00 p.m. NFL game day, a difference of 5,034 vehicles, or a 264.5% difference.

Significantly, Jacobs notes that the addition of the AP/WP will not significantly alter the overall character and development of the project as Xanadu was always envisioned as a "world class entertainment and retail development that would attract both local resident and tourist visitation." (Andretta Cert., Ex. 55 at 3.) The appropriate baseline that should be used for the AP/WP, according to Jacobs, is to add the number of visitors that would likely visit the AP/WP on a given day if it were constructed as a stand-alone facility.[30] The Teams' model, on the other hand, assumes an additional 25 million visitors to American Dream from the approved and estimated number for Xanadu, an 83% increase.[31]

Jacobs also states that the Teams and Developers discrepancies came from significantly different assumptions regarding mitigating factors on NFL game days. For example, the Teams' "Stay-Away" factor for NFL game days only applies the factor to peak game day hours. Jacobs argues the "Stay-Away" factor would best apply for the entire game day, and likely would be higher than both the Developers' and the Teams' estimate. Jacobs also notes that neither party applied a "Stay-Longer" factor,[32] which would alleviate congestion during peak hours. Regarding temporal distribution of trips, Jacobs states that the Teams used an inherently flawed model by using distribution patterns for "Shopping Center" to the entire American Dream project instead of an appropriate distribution that also considers entertainment components. Finally, Jacobs noted the Teams' simulation model includes local drivers using roads near the American Dream and ignores the likelihood that many of these drivers would seek alternate routes to avoid congestion on NFL game days.

[30] This opinion is supported by the NJDOT.
[31] Thirty million visitors were anticipated for Xanadu, where the Teams estimate of 55 million, as noted supra, is based on the Developers marketing materials, which is estimated based on a fully-developed project. Jacobs notes it is neither appropriate, nor a widely accepted practice, to rely solely on marketing materials for a projection of annual visitors.
[32] This factor assumes NFL patrons will visit the ERC following NFL games to avoid traffic leaving the Stadium.

b. Marra's Report and Recommendation

In his Report and Recommendation ("R&R"), Marra echoes the observations of Jacobs, agreeing that much of the Teams' methodology is fatally flawed. Marra also states the Teams "appear to ignore" that the AP/WP includes strict patron capacity limits, which should be taken into consideration. Using the 55 million number, which is based on a "theoretical" 7.5 million square foot project, and dividing it by 365 days to develop trip generation figures is, according to Marra, "overly-simplistic." In the R&R, Marra notes the Teams completely ignore the prior approach used to project traffic for Xanadu, which projections were deemed acceptable pursuant to the Cooperation Agreement.

Notably, Marra points to significant infrastructure improvements that have been implemented since the original Xanadu Traffic Study in 2004. According to the NJDOT, the State has invested around $800 million in road and transit improvements in the area since the Cooperation Agreement was executed. That 2004 Traffic Study took no account for these improvements, but did account for Xanadu components no longer being developed. Marra states the significant improvements must be taken into account when comparing the traffic plan the Teams accepted pursuant to the 2006 Cooperation Agreement, and what the projected traffic will be now. Accordingly, based on the traffic reports presented by the parties and Jacobs, Marra finds it difficult to establish an "adverse effect" given the Cooperation Agreement wherein the Teams' agreed to traffic as it existed at an average 2004 regular season NFL game.

Overall, Marra concludes, "[r]egardless of the nature and scope of the Teams' 'Stadium Project Development Rights' . . . the Teams do not have any rights, including under the Stadium Ground Lease, that are adversely affected by the Proposed Major Modification." (Marra R&R at 54-55.) Marra also found any interpretation of "adverse effect" should not be left to the Teams'

"subjective perspective." He argues any such determination should be made by the NJSEA as it is the only government agency with the authority and duty to do so and also has the expertise to make such a decision to benefit the public.

C. Procedural Posture and Parties' Positions

a. Plaintiff's Complaint

On May 30, 2013, following the NJSEA's approval of the modified project, plaintiffs had filed a two-count complaint seeking injunctive and declaratory relief alleging the NJSEA breached the Cooperation Agreement (Plaintiff's Br. at 23) and the Developers tortiously interfered with same.

First, the plaintiffs claim that, pursuant to Section 1 of the Cooperation Agreement, the NJSEA was required to, and did not, obtain written consent from the Teams prior to any modification to Xanadu that would have an "adverse effect on the development, use or operation of the [SPDR as defined therein]." Plaintiffs state the Teams will sustain "immediate and irreparable injury" in the form of increased traffic congestion, decreased parking availability, a negative impact on patron experience, and loss of goodwill absent a preliminary and/or permanent enjoinment on construction and operation of American Dream. The plaintiffs state an actual controversy exists now that the NJSEA has granted final approval of the project modifications, allowing the Developers to proceed with the project.

Second, plaintiffs claim the Developers, non-parties to the Cooperation Agreement, although successors thereto, knew of and intentionally interfered with the Cooperation Agreement by seeking approval for American Dream knowing the NJSEA would not seek the Teams' prior written consent and that the project would have an adverse effect on plaintiffs' SPDR. Plaintiffs have not specified which SPDR have been adversely affected, but suggest their

use and operation of MetLife Stadium will be negatively impacted by additional traffic gridlock and parking on days when events are held at the Stadium.

b. Motions to Dismiss and Opposition

On July 9, 2013, the Developers and the NJSEA each filed separate motions to dismiss plaintiffs' complaint. Plaintiffs filed their opposition on July 23, 2013. As defendants' briefs largely pose the same arguments, they will be discussed simultaneously, noting areas where they differ.

i. Subject Matter Jurisdiction

First, defendants argue that the matter should be dismissed pursuant to R. 4:6-2(a) for lack of subject matter jurisdiction.[33] According to defendants, the Appellate Division is the proper venue as final decisions made by the NJSEA, an administrative agency, can only be reviewed by the Appellate Division pursuant to R. 2:2-3(a)(2). Defendants argue that this case is not a breach of contract action, which would "not constitute a State administrative action," D.J. Miller & Assocs. v. State, Dept. of Treasury, Div. of Purchase & Prop., 356 N.J. Super. 187, 192 (App. Div. 2002), and accordingly would properly repose in the trial court, but is a "collateral challenge" to the NJSEA's decision.

The NJSEA states this court erroneously determined it to be an interested party, which, according to the August 9th opinion, made it the improper entity to determine whether the AP/WP would adversely impact the Teams' SPDR. The NJSEA wishes, though, to have it be the party to, in effect, determine whether it breached its own contract with the plaintiffs, contrary to its explicitly declared position. It is the NJSEA's contention that it retains jurisdiction to make this determination pursuant to statutory mandate, N.J.S.A. 5:10-4, and that it is shielded

[33] Developers Brief in Supp. of their Motion to Dismiss at 16 ("Developers Br."); NJSEA Brief in Supp. of its Motion to Dismiss at 25 ("NJSEA Br.").

from any "interest" as it receives no pecuniary benefit from the Cooperation Agreement and is not subject to monetary liabilities for a breach.

In response, plaintiffs point out that during oral argument prior to the August 9th decision, the NJSEA repeatedly acknowledged, discussed above, the subsequent approval process would not be dispositive or binding on this court. This determination was memorialized in the August 9th Decision.[34] Accordingly, plaintiffs note, as stated by this court, the NJSEA has the authority to approve the proposed modification, but not the authority to solely determine whether the modification will have an adverse effect on the plaintiffs as the latter would result in a breach of the Cooperation Agreement, a legal determination properly before this court.

Plaintiffs further note this court is the proper venue for a contract claim pursuant to the N.J. Const. art. 6, §3, ¶ 2, and that the NJSEA has the power to "sue and be sued" as a private litigant pursuant to N.J.S.A. 5:10-5(a). Plaintiffs state the NJSEA has not been granted the authority to determine breach of contract claims, even more notably when the NJSEA is a party to the contract. Plaintiff also notes pursuant to Section 8(c) of the Cooperation Agreement, the Teams and the NJSEA agreed to "submit to the jurisdiction of . . . the state [or Federal] courts of the State of New Jersey . . . as the exclusive forum for the determination of all disputes under [the] Agreement." Lastly, plaintiff argues the August 9th decision was correct, and any argument to the contrary does not meet the standard for what is essentially a motion for reconsideration. See R. 4:49-2.

ii. Determining "Adverse Effect"

Second, and somewhat relatedly, defendants argue the NJSEA's "factual" findings are conclusive, and, accordingly, no breach of contract claim can be sustained. Defendants assert that a determination of what constitutes an "adverse effect" is purely factual and is thus a

[34] Meadowlands I, supra, at *35.

question for the NJSEA as fact-finder. It is argued the factual findings at issue, whether the AP/WP will have an adverse effect on plaintiffs' SPDR through increased traffic and alleged eventual loss of goodwill, is something within the specific expertise of the NJSEA, and that under these circumstances this court must accept and apply these factual determinations to any eventual legal decision. It is further argued the NJSEA's determinations should be upheld as it has already reviewed extensive documentation and, assertedly, made an unbiased decision that is within its historical authority and expertise.[35] Defendants claim as the NJSEA is working for the public interest with no vested interest of its own it can make its factual findings impartially, which, defendants assert, should be dispositive.

Defendants also argue the Teams are not the proper party to determine "adverse effects" as this grants the Teams unlimited veto power for even the most de minimis effects. Essentially, defendants argue that by taking the Teams' approach, were the proposed modification to bring in even ***one*** additional vehicle, this could be viewed as an "adverse effect." Accordingly, defendants believe "adverse effect" should be determined by the NJSEA, as it retains the regulatory authority for development of the Sports Complex, without requiring the Teams' consent, or, apparently, review by this court, through their own "self-serving" interpretation of "adverse effect."

In response, plaintiffs state, "(i) under governing New Jersey law the NJSEA's findings are not binding on the Court; (ii) the NJSEA's finding of no adverse effect is actually a legal conclusion, not a finding of fact; and (iii) the NJSEA's findings of fact or conclusions of law are not dispositive, or even properly before the Court, on these motions to dismiss."

[35] The Developers note that this court specifically stated that the NJSEA, "at least in the first instance," is the only party that can approve the proposed modification "and its effects on parking, traffic, safety, and other matters." Id. at *30-31. As discussed supra, it was determined that while this may be the case as to *approval*, the NJSEA is not solely the proper entity to determine "adverse effect," and accordingly any potential breach of its own contract.

Plaintiffs point out first the NJSEA already conceded it cannot make a dispositive determination as to contractual breach. Further, plaintiffs state, as the August 9th decision held, allowing the NJSEA to make binding factual determinations regarding adverse effects while allowing the court to make the inevitable legal determination could, in effect, "allow defendants to procedurally manipulate the court." Meadowlands I, supra, at *39-40, fn. 13. Accordingly, plaintiffs claim this court is not subject to the NJSEA's factual findings regarding adverse effect and has the sole jurisdiction to determine the breach of contract claim.[36] Finally, plaintiffs argue the Cooperation Agreement controls the determination of "adverse effects" and not the NJSEA process, and that the process was not "full and fair."

iii. Failure to State a Claim – Injunctive Relief

Third, defendants state plaintiffs' complaint seeking injunctive relief must be dismissed pursuant to R. 4:6-2(e) as plaintiffs have not sufficiently pled they will be irreparably harmed as required. Defendants argue, in essence, the potential harm, increased traffic or loss of goodwill, is too speculative. Defendants assert plaintiffs have produced a "worst-case scenario" that is unlikely to occur, particularly given the improved conditions to transportation in the area since the Cooperation Agreement was executed. Additionally, it is noted Paragraph 3 of the Cooperation Agreement states adverse traffic and parking conditions only apply to Sunday NFL home games, thus making a permanent injunction "overbroad and unworkable."

The NJSEA further argues injunctive relief is unavailable as plaintiffs have an adequate remedy at law to deal with any future adverse effects the proposed modification may cause. Pursuant to the Cooperation Agreement, Section 8.7, the Teams may bring an action to enforce

[36] Plaintiffs make various additional arguments regarding jurisdiction that effectively reiterate the NJSEA's determinations are not final, are not dispositive, are an improper *legal* determination, the Teams are not seeking to challenge an agency action and are thus not subject to appellate review, the issue of "interested party is irrelevant," and their complaint is not a "collateral attack."

their contractual rights within two years from the opening of the ERC. The NJSEA proffers the Teams can at that time seek to close the ERC and AP/WP on Sunday game days. Accordingly, it is alleged, injunctive relief, as an "extraordinary remedy," is not appropriate.

In response, plaintiffs argue they have sufficiently pled irreparable harm by stating the proposed changes to the project will result in traffic congestion, reduced parking availability, and will impair ingress and egress from the Stadium, causing the loss of goodwill of its patrons, which will violate plaintiffs' consent rights pursuant to Section 1 of the Cooperation Agreement. Plaintiffs state that discovery and a trial on the merits are necessary to fashion the appropriate relief, and that there is a strong public interest in enforcement of a valid contract.

iv. Failure to State a Claim – Tortious Interference

Fourth, the Developers claim that plaintiffs' cause of action for tortious interference must be dismissed pursuant to R. 4:6-2(e) for failure to state a claim as there is no allegation of any conduct by the Developers that could be viewed as intentional and malicious. Plaintiffs' claims regarding tortious interference are concededly the same as in the 2012 action.

Plaintiffs respond by noting this court upheld their original pleading of tortious interference and stated at oral argument that plaintiffs "don't have to allege with specificity now under a 4:6-2(e). All they have to make is a general allegation of the elements of the tort." (Giuffra Cert., Ex. 3 at 40-41.)

v. Failure to State a Claim – Breach of Contract

Fifth, the Developers argue plaintiffs have failed to plead they have performed their obligations under the contract or satisfied its terms, and accordingly have failed to state a cause of action for breach of contract pursuant to R. 4:6-2(e).

vi. More Definite Statement – Stadium Project Development Rights

Sixth, the NJSEA argues that should this court determine this case shall proceed to discovery, plaintiffs must be required to amend their pleading to explain which "Stadium Project Development Rights" must be protected from an "adverse effect." The NJSEA states that pursuant to the Cooperation Agreement, plaintiffs' SPDR only "emanate" from (1) the approved Master Plan for MetLife Stadium, and (2) the Teams' Ground Lease for MetLife Stadium. The NJSEA notes Marra, in his R&R, concluded the proposed modification did not violate plaintiffs' lease rights. Accordingly, the NJSEA believes plaintiffs must set forth a more definitive statement of what their SPDR are for traffic, parking, ingress/egress, goodwill, and "fan experience" pursuant to R. 4:6-4(a).

In response, plaintiffs contend that the NJSEA misreads the Cooperation Agreement in two respects. First, plaintiffs point to Section 2 of the Agreement which defines SPDR as "the development, construction, operation and use rights related to the Stadium Project."[37] Accordingly, plaintiffs state the SPDR are "general Stadium 'operation and use rights,' not specific provisions of the Stadium Ground Lease and Master Plan." (Opp. Br. at 42.) Plaintiffs argue it is unreasonable to claim rights "emanate" from the Stadium Master Plan as that contract does not, according to plaintiff, bestow "specific rights" upon the Teams. Plaintiffs add Section 8.24 of the Stadium Ground Lease confirms the apparent flaw in the NJSEA's theory because it contains a clause similar to the adverse effect clause in the Cooperation Agreement.[38]

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[37] Stadium Project is allegedly described referentially to the Stadium Ground Lease and Master Plan.

[38] Section 8.24 states:

> Following the Development Period, the [NJSEA] shall not enter into . . . any New Sports Complex Agreement, or renew, amend or extend, or waive any provision of, any Existing Sports Complex Agreement, the execution, delivery, performance and/or waiver of which would (or would reasonably be expected in the future to) . . . (iii) in the case of the Meadowlands Xanadu Project Agreements, or any resultant plan, instrument or agreement . . . , have an *adverse effect of the development, use or operation of the Project* in accordance with the Approved Preliminary Master Plan (or the Approved Master Plan upon its approval) or Tenant's rights under this Agreement . . . .

Second, plaintiffs again point to Section 1 of the Cooperation Agreement, the "adverse effects" clause. Plaintiffs argue this provision would be "superfluous" if the Teams needed to identify provisions of the Stadium Ground Lease or Stadium Master Plan that would be violated as a result of changes to the Xanadu project. Plaintiffs reiterate that traffic and parking problems created by the additional developments for American Dream will "adversely affect the Teams' operation and use of MetLife Stadium (and that the NJSEA has neither sought nor received the Teams' prior written consent for the changes to the project)." (Opp. Br. at 44.) Plaintiffs argue this suffices for a breach of Section 1 of the Cooperation Agreement.

vii. Summary Judgment

Finally, the Developers argue summary judgment should be granted based upon the administrative record. According to the Developers, the parties had a "full and fair hearing," during which the Teams could not establish an adverse effect. The Developers request this court determine if there is an issue of material fact regarding whether the proposed modification would have an adverse effect on any of plaintiffs' SPDR, which would in turn result in a material breach of plaintiffs' contract rights pursuant to the Cooperation Agreement.

The Developers take the position the plaintiffs have already approved the Xanadu Project in 2006, which included an NJDOT permit that purportedly allowed over 55 million annual visitors, the amount it is asserted the Developers believe may visit American Dream. It is argued that plaintiffs, when confronted with traffic studies showing "no significant increase" in traffic as a result of the addition of the AP/WP, subsequently claimed the number of visitors was an issue and then "cobbled together an unprofessional traffic model based on non-standard analyses that presents a result completely devoid of credibility or legitimate analysis." (Developers Br. at 33.)

[Giuffra Cert., Ex. 26, § 8.24 (emphasis added)].

The Developers urge their traffic models, or the independent NJSEA traffic models, should be accepted by this court, which would, according to the Developers, resolve the issue of "adverse effect" in their favor.

Plaintiffs understandably respond by noting summary judgment is inappropriate prior to discovery and it would not be proper to make such a determination by deferring to the administrative record. Plaintiffs argue the record is incomplete as the NJSEA refused to demand documents from the Developers despite "repeated requests" from plaintiffs. This refusal, it is argued, precludes a dispositive determination as to adverse effects, and accordingly breach of contract, at this stage in the litigation. Plaintiffs argue the Developers inevitable plan for American Dream, which is allegedly unknown to plaintiffs, presents a material issue of fact that must be determined. The "fairness" of the hearing is also questioned by the Teams.[39]

c. Defendants' Reply, Plaintiffs' Authorized Sur-Reply, and Oral Argument

Defendants filed separate replies on July 30, 2013. Following their submissions, this court, by way of letter, authorized plaintiffs to submit a sur-reply, no longer than twenty (20) pages, by August 9, 2013. Plaintiffs filed their sur-reply on that date.

In their reply, the Developers reiterate their argument the NJSEA is the proper party to determine adverse effect and the only jurisdiction available for review is the Appellate Division. The Developers also note the Teams' broad request for injunctive relief should be dismissed as the Teams have apparently admitted they are only concerned about closing American Dream on game days. The NJSEA makes similar arguments in its reply, also contending plaintiffs' true intention in bringing this action is to challenge the MPC review process. Finally, the NJSEA notes the plaintiffs acknowledged their claimed rights, which are allegedly unspecified, are

[39] Plaintiffs also argue that they were not, in fact, provided with a "full and fair hearing" and that the MPC process was "made up along the way," and was subjected to the bias of the NJSEA and Marra.

broader than their lease rights. The NJSEA thus states plaintiffs must apprise the NJSEA of the scope of their rights and how these rights have been violated, resulting in the alleged breach.

Plaintiffs' sur-reply contends the NJSEA's broad power over development at the Meadowlands does not grant the NJSEA quasi-judicial powers involving its commercial contracts with private parties. Plaintiffs point out, as the NJSEA has the power to "sue and be sued" pursuant to N.J.S.A. 5:10-5(a), it is subject to a suit, in court, just as any other private litigant. See also Taylor v. N.J. Highway Auth., 22 N.J. 454, 468-471 (1956) (stating that the "express or implied authority to sue and be sued should generally be considered as sufficient to enable suits in tort as well as contract" against state agencies). Plaintiffs argue granting the NJSEA authority to determine "adverse effect," dispositively determining whether the Cooperation Agreement was breached, would effectively nullify the Agreement and other similar contracts with the NJSEA. Plaintiffs note their SPDR "[include] but [are] not limited to rights and obligations that arise under the Ground Lease," arguing that it is unnecessary to look to specific provisions of the Ground Lease for a violation of plaintiffs' SPDR. (Giuffra Cert., Ex. 1, § 2(a).) Plaintiffs also concede their injunction is not as broad as defendants indicate as they are not seeking to preliminarily enjoin construction of American Dream, but merely seek to have this court determine the proper scope of any injunction.

Oral argument was entertained on August 23, 2013.

Law

A. Subject Matter Jurisdiction – 4:6-2(a)

New Jersey state agencies generally do not make legally binding determinations unless expressly granted authority to do so by the Legislature. Archway Programs, Inc. v. Pemberton Twp. Bd. of Ed., 352 N.J. Super. 420, 424-425 (App. Div. 2002) (stating that while the

Department of Education has the authority, pursuant to N.J.S.A. 18A:6-9, to resolve controversies arising under "school laws," contract claims against the agency's board are to be "adjudicated in the courts."); see also Picogna v. Bd. of Ed. of the Twp. of Cherry Hill, 249 N.J. Super. 332, 335 (App. Div. 1991) (holding that the contract claim of a nontenured school employee did not "arise under the school laws simply because its outcome may later enable him to attain tenure under school laws," and, accordingly, was for the courts to decide). Legal determinations are left to the trial court pursuant to statutory and common law. Archway, supra, 352 N.J. Super. at 425.

It is possible that once an agency decides all issues within their authority, no factual issues will be left for the trial court to decide. Id. at 431-32. The issues, however, must be within the "purview" of the agency to determine. Id. at 424-25, 431-32. As explained in Boss v. Rockland Elec. Co., 95 N.J. 33 (1983), where a determination of the legal rights of parties depends "in part" on "determination of factual issues that have been placed within the ***special competence*** of [an administrative body] . . . the proper procedure . . . is for the court to refer the factual issues to the agency for findings." Id. at 36 (emphasis supplied). Accordingly, a court need not defer to an agency finding where that determination was not within the "special competence" of the agency—i.e. when the determination is not an issue specifically reserved for agency findings, such as a breach of contract case, particularly when the case is brought against the agency itself.

Challenges to final agency decisions are properly brought before the Appellate Division. K. Hovanian Cos. of N. Cent. Jersey, Inc. v. N.J. Dep't of Envtl. Prot., 379 N.J. Super. 1, 9 (App. Div. 2005); R. 2:2-3(a)(2). Challenges might include whether an agency followed the law or whether it made a reasonable determination based on the information it received. Circus

Liquors, Inc. v. Governing Body of Middleton Twp., 199 N.J. 1, 9 (2009). A quasi-judicial decision by an agency should be sustained unless there is a '"clear showing' that it is arbitrary, capricious, or unreasonable, or that it lacks fair support in the record." Id.

B. Contract Interpretation: Forum Selection Clause – Sophisticated Parties

As a general rule, courts should enforce a contract as the parties to that contract intended. Pacifico v. Pacifico, 190 N.J. 258, 266 (2007). "When the terms of [a] contract are clear, it is the function of a court to enforce it as written and not to make a better contract for either of the parties." Kampf v. Franklin Life Ins. Co., 33 N.J. 36, 43 (1960); State v. Signo Trading Int'l, 130 N.J. 51, 66 (1991) (holding that even despite "significant policy considerations" there was "no legal principle" that would allow the Court to circumvent clear contract language in an insurance policy). In particular, where "obviously" sophisticated parties "freely and voluntarily" enter into an agreement that includes a forum selection clause, those parties should be bound to their agreement. McMahon v. City of Newark, 195 N.J. 526, 546 (2008). The Court held in McMahon that where a dispute was purely contractual in nature, the forum selection clause of the parties' contract was invoked as opposed to the limited jurisdiction of the tax court. Id. at 544. Further, the court noted, "[t]he fundamental proposition is both . . . long standing and easily stated: 'the judgment of a tribunal lacking jurisdiction to enter such a judgment is utterly void.'" Id. at 547 (quoting Maguire v. Van Meter, 121 N.J.L. 150, 153 (E. & A. 1938)). The court continued, "[f]urthermore, even assuming the Tax Court had the subject matter authority to determine this controversy, plaintiff's complaint—originally and properly—was filed in the Law Division, and 'where two in the same state have concurrent jurisdiction over a matter, the court in which jurisdiction is first invoked obtains exclusive jurisdiction.'" Id. (quoting Union City Assocs. v. Union City, 115 N.J. 17, 26 (1989)).

C. Failure to State a Claim – 4:6-2(e)

Rule 4:6-2(e) sets forth how a defense or objection to a claim by an adversary may be presented. "Every defense, legal or equitable, in law or fact, to a claim for relief in any complaint, counterclaim, cross-claim, or third-party complaint shall be asserted in the answer thereto." Ibid. The following are exceptions to this general rule and "may at the option of the pleader by made by motion, with briefs: (a) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (c) insufficiency of process, (d) insufficiency of service of process, (e) failure to state a claim upon which relief can be granted, (f) failure to join a party without whom the action cannot proceed." Ibid.

The standard governing analysis of a motion to dismiss for failure to state a claim pursuant to R. 4:6-2(e) is the allegation must be examined "in depth and with liberality to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." Printing Mart-Morristown v. Sharp Elecs. Corp., 116 N.J. 739, 746 (1989). At this preliminary stage of the litigation the court should not be concerned with the ability of the litigant to prove the allegation. See id. at 746. The claimant is entitled to every reasonable inference of fact and the examination of an allegation of fact required by the aforestated principles should be one that is at once painstaking and undertaken with a generous and hospitable approach. See id. "Courts should grant these motions with caution and in 'the rarest instances.'" Ballinger v. Delaware River Port Auth., 311 N.J. Super. 317, 322 (App. Div. 1998) (quoting Printing Mart, supra, 116 N.J. at 772).

A motion for dismissal for failure to state a cognizable claim pursuant to R. 4:6-2(e) should be based on the pleadings, with the court accepting as true the facts alleged. See Rieder v. State Dept. of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987). Nevertheless, the motion

should be granted if even a generous reading of the allegations does not reveal a legal basis for recovery. See Edwards v. Prudential Prop. and Casualty Co., 357 N.J. Super. 196, 202 (App. Div. 2003). "The motion may not be denied based on the possibility that discovery may establish the requisite claim; rather, the legal requisites for plaintiff's claim must be apparent from the complaint itself." Edwards, supra, 357 N.J. Super. at 202.

a. Injunctive Relief

Injunctive relief is an extraordinary equitable remedy that should be entered only with the exercise of great care and only upon a showing, by clear and convincing evidence, of entitlement to the relief. Dolan v. DeCapua, 16 N.J. 599, 614 (1954) ("Injunctive judgments are not granted in the absence of clear and convincing proof"); Waste Management of N.J., Inc. v. Union County Utils. Auth., 399 N.J. Super. 508, 519 (App. Div. 2008); Mays v. Penza, 179 N.J. Super. 175, 179-80 (Law Div. 1980) (Injunction should be granted "only where the proven equities establish a clear need" and "only in the clearest of factual circumstances and for the most compelling of equities.").

The seminal case in determining whether injunctive relief should be granted remains Crowe v. De Gioia, 90 N.J. 126 (1982). Under Crowe, the movant bears the burden of demonstrating that: 1) irreparable harm is likely if the relief is denied; 2) the applicable underlying law is well settled; 3) the material facts are not substantially disputed and there exists a reasonable probability of ultimate success on the merits; and 4) the balance of the hardship to the parties favors the issuance of the requested relief. Id. at 132-34. Each of these factors must be clearly and convincingly demonstrated. Waste Management, supra, 399 N.J. Super. at 520. A ***preliminary*** injunction should not be entered except when necessary to prevent substantial,

immediate and irreparable harm. Subcarrier Commc'n, Inc. v. Day, 299 N.J. Super. 634, 638 (App. Div. 1997).

As to the irreparable harm element, harm is generally considered irreparable in equity if it cannot be redressed adequately by monetary damages. Crowe, supra, 90 N.J. at 132-33. Pecuniary damages may be inadequate due to the nature of the injury or the right affected. Id. at 133. Injunctive judgments, and accordingly irreparable harm, require proof by clear and convincing evidence. Dolan v. DeCapua, 16 N.J. 599, 614 (1954); see also Subcarrier, supra, 299 N.J. Super. at 638 (noting that generally, "preliminary injunctions should not be entered except when necessary to prevent substantial, immediate and irreparable harm.").

To prevail on an application for temporary relief, a plaintiff must make a preliminary showing of a reasonable probability of ultimate success on the merits. Crowe, supra, 90 N.J. at 133. That requirement is tempered by the principle that mere doubt as to the validity of the claim is not an adequate basis for refusing to maintain the status quo. Id. Indeed, the point of temporary relief is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began. Id. at 134. Here, plaintiffs do not seek a temporary or preliminary injunction, only an injunction at the conclusion of the case.[40]

Although all four factors must weigh in favor of injunctive relief, courts may take a less rigid view in consideration of the factors where the interlocutory relief sought is designed to preserve the status quo. McKenzie v. Corzine, 396 N.J. Super. 405, 414 (App. Div. 2007); see also Rinaldo v. RLR Inv., LLC, 387 N.J. Super. 387, 396 (App. Div. 2006) ("a party who seeks mandatory preliminary injunctive relief must satisfy a 'particularly heavy' burden."). Again, the primary purpose of interlocutory injunction is to maintain the parties in substantially the same condition when the final decree is entered as they were when the litigation began. Crowe, supra,

[40] Plaintiffs' complaint does seek a preliminary injunction, but no such request has yet been brought forth.

90 N.J. at 134. The issuance of an interlocutory injunction must be squarely based on an appropriate exercise of sound judicial discretion, which, when limited to preserving the status quo during the suit's pendency, may permit the court to place less emphasis on a particular Crowe factor if another greatly requires the issuance of the remedy. Waste Management, supra, 399 N.J. Super. at 520. By the same token, in some cases, such as when the public interest is greatly affected, a court may withhold relief despite a substantial showing of irreparable injury to the applicant. Id.

b. Tortious Interference

As explained by the Court in Printing Mart, supra:

> An action for tortious interference with a prospective business relation protects the right "to pursue one's business, calling or occupation free from undue influence or molestation." Louis Kamm, Inc. v. Flink, 113 N.J.L. 582, 586 (E. & A. 1934). What is actionable is "[t]he luring away, by devious, improper and unrighteous means, of the customer of another." Ibid. Therein lie the elements of a prima facie case.
>
> [116 N.J. at 750.]

To state a claim for tortious interference, "there must be allegations of fact giving rise to some reasonable expectation of economic advantage. A complaint must demonstrate that a plaintiff was in pursuit of business. Second, the complaint must allege facts claiming that the interference was done intentionally and with malice." Id. at 751 (internal quotations and citations omitted).

D. More Definite Statement – Rule 4:6-4(a)

Pursuant to R. 4:6-4(a), "If a responsive pleading is to be made to a pleading which is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, the party may move for a more definite statement before interposing a responsive pleading." While such motions may be helpful and "sadly underutilized," discovery is the proper method by

which parties to an action uncover the details of each other's position. Kotok Bldg. v. Charvine Co., 183 N.J. Super. 101, 106 (Law Div. 1981).

Pleadings that only recite mere conclusions without facts may not justify a lawsuit or may require a more definite statement pursuant to R. 4:6-4(a). Glass v. Suburban Restoration Co., 317 N.J. Super. 574, 582 (App. Div. 1998). A complaint, though, is sufficient if it allows parties to properly search for the truth through discovery rather than "blunder" into it. Kotok, supra, 183 N.J. Super. at 107. A complaint should provide the basic facts necessary for further discovery, and discovery should uncover those facts. Id.; see also Chavarriaga v. Ross Pub. Affairs Grp., 2011 N.J. Super. Unpub. LEXIS 1893, at *18 (App. Div. July 14, 2011) ("Pleadings must fairly apprise the adverse party of the claims.") (quotation omitted).

E. Summary Judgment

Motions for summary judgment are controlled by R. 4:46-2, which states in pertinent part:

> The judgment or order sought shall be rendered forthwith if the pleadings . . . together with the affidavits . . . show that there is no genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law. An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require the submission of the issue to the trier of fact.
>
> [R. 4:46-2.]

The seminal New Jersey case interpreting R. 4:46-2 is Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520 (1995). In Brill, the Supreme Court of New Jersey held when deciding a motion for summary judgment, the motion judge must consider whether the competent evidential materials presented, when viewed in a light most favorable to the non-moving party and considering the

applicable evidentiary standard, are sufficient to permit a rational fact finder to resolve the alleged disputed issues in favor of the non-moving party. See id. at 523.

As such, the court must first interpret the facts in the light most favorable to the non-petitioner. Second, should operative facts come into question, the motion must be denied.

Analysis

The principle that a party cannot determine whether it breached its own contract is simple, indisputable, and fundamental. It is this most basic principle that guides the determination that follows.

Defendants' motions to dismiss plaintiffs' claim for breach of contract pursuant to R. 4:6-2(a) are denied as this court retains exclusive jurisdiction concerning a determination whether the NJSEA approval of the proposed modification breaches its contract with plaintiffs by causing an adverse effect on plaintiffs' SPDR pursuant to Section 1 of the Cooperation Agreement. The defendants' motions to dismiss plaintiffs' demand for injunctive relief pursuant to R. 4:6-2(e) are granted as it relates to construction, but denied as it relates to operation. The Developers' motion to dismiss plaintiffs' claim for tortious interference pursuant to R. 4:6-2(e) is denied as plaintiffs have met the pleading standard. The NJSEA's request for a more definite statement pursuant to R. 4:6-4(a) is denied as plaintiffs have, with sufficient specificity, notified defendants as to the alleged violations, allowing for further targeted exploration during discovery.[41] The Developers' demand for summary judgment is denied as the NJSEA's findings are neither dispositive, nor, even if instructive, sufficient to determine whether a breach occurred or whether the Developers tortiously interfered with plaintiffs' contract.

A. Subject Matter Jurisdiction

[41] This determination is not a determination as to which party correctly sets forth rights pursuant to the Cooperation Agreement as it pertains to SPDR.

No party can determine whether it breached its own contract. If for no other reason than this fundamental principle of law and reason, defendants' motions to dismiss for lack of subject matter jurisdiction must be denied. Defendants have artfully, and at times somewhat convincingly, described why the NJSEA has the authority to determine what it claims is a "factual" finding. That finding, though, would compel this court to make the legal determination the NJSEA did not breach its own contract. As the issue of "adverse effect" must rest solely with this court pursuant to the Cooperation Agreement, case law, the NJSEA's own admission, and basic principles of fairness and logic, this case must proceed to allow this pivotal determination.

First, and most importantly, the plaintiffs and the NJSEA specifically included a forum selection clause in the Cooperation Agreement. The terms of that clause are clear and were entered into by highly sophisticated parties. There is no suggestion the parties did not enter into the agreement in any way other than freely, fairly, and only after protracted negotiations. Accordingly, this court is obligated to enforce the contract as the parties intended. Pacifico, supra, 190 N.J. at 266. Allowing the NJSEA, a party to that agreement, to make a determination, whether factual or otherwise, which would be dispositive as to its own purported breach would eviscerate both the forum selection clause and the agreement as a whole. Any interpretation that concluded the NJSEA has the authority to determine whether it breached its own contract would surely place it in a better position than that agreed to by the parties and cannot be accepted. Signo, supra, 130 N.J. at 546. No entity, agency, municipality, or otherwise, has the authority to make such a determination.

As sophisticated entities, the parties could have agreed that the NJSEA would determine dispositive issues, including "adverse effects." They similarly could have agreed that the Teams

would make such a determination. Both parties, however, consensually agreed that this court, or the District Court of New Jersey, would be the ultimate arbiter of any dispute that arose pursuant to the Cooperation Agreement.

The NJSEA was presented with a very specific task: whether to approve, disapprove, or modify the proposed modification. That the NJSEA saw fit to review any "adverse effect" is surely within its prerogative, but cannot bind this court. This determination, pursuant to the Cooperation Agreement, is properly before this court only and cannot be made by the NJSEA regardless of its conspicuously concerted effort to do so. During prior oral argument, and in its earlier decision, this court repeatedly emphasized the ultimate issue of adverse effects, and accordingly, the issue of breach of contract, must repose with this court. The NJSEA cannot be allowed to usurp the authority granted to this court pursuant to both the Agreement and the law.

In determining the issue of "adverse effect," and in turn whether a breach occurred, it also bears noting that it is irrelevant whether the NJSEA is an "interested party."[42] The NJSEA is bound by the forum selection clause of Cooperation Agreement and, further, must act within the confines of its authority. The NJSEA argues it is only acting in "the public interest." (NJSEA Br. at 12.) To that end, it entered into the Cooperation Agreement with the Teams to further the development of the Meadowlands by ensuring the Teams' continued presence and paving the way for the construction of Xanadu. The NJSEA, accordingly, must have determined it was in "the public interest" to maintain their relationship with the Teams by granting them the right to object to any proposed modifications to Xanadu that might have an "adverse effect" on

[42] Even though this determination is irrelevant, the NJSEA may be an "interested party" within the meaning of In re Carberry, 114 N.J. 574 (1989), as relied on by defendants. The NJSEA acts as landlord to various tenants, including the Teams, and acts much as a private entity, collecting rents and entering into contractual agreements. Regardless, the NJSEA, unlike the agency in Carberry, does not have the specific statutory authority to determine whether it breached its own contract. Nothing herein is meant to suggest that the NJSEA acted in a partial or unfair manner in exercising its administrative obligations as ***that*** determination is properly before the Appellate Division; however, as the effective landlord and party to the Cooperation Agreement, the NJSEA surely has an "interest" in determining it did not breach that Agreement.

the Teams' SPDR and agreeing that disputes on that issue would be brought before this court.[43] Thus, while the NJSEA may determine "adverse effect" for internal purposes, such a determination cannot be used to deprive this court of its authority and, in effect, render the Cooperation Agreement academic.[44]

Second, the NJSEA does not have the authority to solely determine "adverse effect" based on statutory law as it does not appear to be within the special competence of the NJSEA; it is a term created pursuant to a contract entered into by the NJSEA, not a statutory term. Boss, supra, 95 N.J. at 36; Archway, supra, 352 N.J. Super. at 425. Nowhere in the NJSEA's broad powers was it granted quasi-judicial authority to determine "adverse effects," or to dispositively determine whether it breached its own contract. The authority "[t]o determine the location, type and character of a project or any part thereof and all other matters in connection with all or any part of a project" pursuant to N.J.S.A. 5:10-5(x) is not, and logically cannot be, ***so*** broad as to authorize the NJSEA to enter into contracts and then unilaterally determine whether it acted in a way to breach those contracts.

Drawing a "fine line" as to its authority as the only entity that can dispositively determine "adverse effect," the NJSEA contends, "[it] did not decide whether it breached its own contract (i.e., the Cooperation Agreement), but its fact-finding ***compels*** the conclusion that no breach has occurred." (Developers Reply Br. at 13) (emphasis supplied). Regardless of the NJSEA's

[43] For the first time, at oral argument, the Developers' counsel asserted that the forum selection clause is more properly denominated a "forum prohibition clause," noting that a contract may not confer jurisdiction where there is none. First, it should be noted that ***conferring*** jurisdictional authority is not the same as ***limiting*** such authority, the latter of which is what clearly appears to be the intent and purpose of the forum selection clause in the Cooperation Agreement. Further, regardless of counsel's artful denomination, as eloquently stated by Gertrude Stein, "a rose is a rose is a rose is a rose."

[44] Again at oral argument for the first time, the Developers' counsel sought to urge as the Teams affirmatively submitted the issue of adverse effect to the NJSEA they should therefore be bound by the NJSEA's determination on that issue. As this issue was not briefed it is not necessary to make a determination except to note that the Teams participated in the NJSEA process at this court's direction and consistently stated they did not waive the right to be heard before this court, notably, on the issue of adverse effect as stated in the August 9th opinion.

impressive linguistic gymnastics, such sophistry cannot be countenanced. The NJSEA does ***not*** have the authority to bind this court to a legal determination regarding a breach of the NJSEA's own contract.[45]

The NJSEA's and Developers' reliance on Boss is misplaced. Boss held for the proposition that where the resolution of a legal issue turns on a factual issue within the "special competence" of an agency's expertise, the court should refer the factual issues to the agency. Boss, supra, 95 N.J. at 36, 42. In its earlier opinion, this court clearly held, "the claim at issue before this court, i.e., whether adverse effects will occur, is not 'placed within the special competence' of the NJSEA out of deference to its fact-finding expertise. The question of adverse effects is properly only before this court." Meadowlands I, supra, at *39. The NJSEA does not have the "special competence" to make the legal determination of breach of contract, which implicates a finding of "adverse effect"; the NJSEA was neither granted quasi-judicial authority to determine whether it breached its own contracts nor the specific duty to determine "adverse effects." Regardless of whether "adverse effect" is a legal, factual, or hybrid legal/factual finding, it simply cannot be within the NJSEA's "special competence" to both enter into a contract and then unilaterally determine whether it breached that contract.[46]

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[45] Fine legal distinctions are also not appropriate in a court of equity, which regards substance over form. See Applestein v. Bd. & Carton Corp., 60 N.J. Super. 333, 348-49 (Ch. Div. 1960). The parties' intentions are the "dominant test for evaluating the legal effect of a particular instrument," and surely the NJSEA and the Teams did not intend to allow the NJSEA to substantively determine whether it breached the Cooperation Agreement. Bruen v. Switlik, 185 N.J. Super. 97, 103 (App. Div. 1982). In order to ensure that justice is done, it is "essential" that technical or procedural forms at times be subordinated to substance. Fidelis Factors Corp. v. Du Lane Hatchery, Ltd., 47 N.J. Super. 132, 138 (App. Div. 1957).

[46] While not precedential, plaintiff cites to a New York Court of Appeals case which is instructive. In Abiele Contracting, Inc. v. New York City Sch. Constr. Auth., 91 N.Y.2d 1 (1997), a municipal agency claimed a general contractor's contract suit against it was barred by the agency's determination that the contractor had defaulted. The determination followed an extensive review by the agency's "Default Committee" through a quasi-judicial process. Id. at 6-7. The Court rejected the agency's decision holding, "[a] municipal agency's finding that a general contractor has defaulted on its performance under the contract will not bind the general contractor, and foreclose a plenary action, unless the agency is endowed with contractual or statutory authority to render a quasi-judicial, final and binding determination." Id. at 8. As in Abiele, the NJSEA, while having broad authority, does not have such final and binding quasi-judicial authority to make a determination that would foreclose a plenary action, ***particularly***

Finally, matters of equity simply require the NJSEA not be allowed to dispositively determine whether it breached its own contract. The NJSEA has repeatedly acknowledged it does not have the authority to determine whether it breached its own contract. (Giuffra Cert., Ex. 3 at 32, 34-35.) While not raised by the parties, the doctrine of judicial estoppel appears applicable. Pursuant to the doctrine, in order to "protect the integrity of the judicial process," a party should not be able to advocate a position contradictory to a position it asserted in the same or previous action. Kimball Int'l, Inc. v. Northfield Metal Prods., 334 N.J. Super. 596, 606 (App. Div. 2000). The NJSEA previously acknowledged, and continues to assert it cannot dispositively determine whether it breached its own contract.[47]

When presented with this court's earlier decision, which clearly held that the issue of "adverse effect" could ***only*** be determined by this court, it is significant to note that neither the NJSEA nor the Developers appealed that decision. This court even specifically acknowledged allowing the NJSEA to dispositively determine "adverse effect" would effectively sanction a procedural manipulation of the court. Meadowlands I, supra, at fn. 13.

It is disquieting that the NJSEA appears to have essentially disregarded this court's clear holding, went to great lengths to determine "adverse effect," and then subsequently attempts to bind this court to the NJSEA's own, in effect, legal determination. In taking this approach, the NJSEA, and the Developers, seek to avoid the more rigorous preponderance standard of review

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where a forum selection clause names this court as the entity to resolve the parties contractual disputes. Additionally, even if the determination of "adverse effect" was within the NJSEA's "special competence" pursuant to Boss, the instant matter is clearly distinguishable. The agency in Boss was neither a party to a contract nor made a determination that affected a suit against it. The agency in Boss was tasked to determine the precise question at issue, where in this case, the NJSEA is attempting to act pursuant to its broad, general powers. Boss, supra, 95 N.J. at 39. The simple understanding that a party cannot have the authority to determine whether it breached its own contract, directly or indirectly, places this case outside the holding in Boss.

[47] It bears further noting that, in this court of equity, defendants, seeking equity by way of dismissing plaintiffs' complaint and having the issue of adverse effects heard by the Appellate Division, must do equity. Hudson Bldg. & Loan Assoc. v. Black, 139 N.J. Eq. 88, 96 (E. & A. 1946). It appears wholly inequitable to allow the NJSEA to repeatedly represent they will not make a dispositive determination and subsequently place a significant emphasis on both making that determination and attempting to bind this court to the same.

and take their legal determination to the Appellate Division, which would be required to review the findings pursuant to the "arbitrary and capricious" standard. Circus Liquors, supra, 199 N.J. at 9. Plaintiffs may have reasonably relied on defendants' failure to appeal and assumed all parties agreed with this court's prior opinion and its ***clear*** holding that only it could determine "adverse effects." It is disconcerting, particularly in a court of equity, to now, long after the time for an appeal or motion for reconsideration, argue this court's earlier decision was incorrect and that the NJSEA's determination, whether fairly reached or otherwise, is dispositive.[48] Defendants now, one year later, after a decision in their favor, bring a "reconsideration in disguise," expecting this court to disregard its prior decision and adhere to defendants' self-created quasi-judicial authority. This endeavor, no matter how clever or articulately crafted, attempts a manipulation of the judicial process that cannot be countenanced.

B. Failure to State a Claim

a. Injunction

Plaintiffs have met the pleading standard for injunctive relief. The Teams have made clear the reasons they seek to enjoin operation of American Dream, and that they may be entitled to such relief upon the submission of persuasive evidence. In their complaint, plaintiffs demand "a preliminary and/or permanent injunction enjoining and restraining the Developers and the NJSEA from proceeding with the construction or operation of the American Dream project." (Compl. at 26.) Plaintiffs claim this is necessary as the "Teams will sustain and will continue to sustain immediate and irreparable injury . . . unless the construction and operation of the American Dream project are enjoined on a preliminary and/or permanent basis." (Compl. ¶ 71 & 77.) Plaintiffs have, however, conceded they do not seek to enjoin construction of American

[48] The only reason defendants' motions are not "technically" motions for reconsideration is because the prior action was dismissed. That said, the issues here are the same, and there is no reason to find this court's prior decision is now incorrect.

Dream. (Pl. Sur-Reply at 19; Certification of A. Ross Pearlson ("Pearlson Cert.") at Ex. A. (video of Giants President and CEO John K. Mara stating the Teams have "no objection to [American Dream] commencing" but are "just concerned about game days").)[49] Premised upon these admissions, the request to enjoin the construction of American Dream is stricken. The court need not, at this time, explore in detail whether plaintiffs' request for injunctive relief is too speculative or if there is an alternative remedy at law pursuant to Section 3 of the Cooperation Agreement.

The Teams agreed to Xanadu, but have not agreed to American Dream. Regardless of whether they will ultimately be successful in showing they require the "extraordinary remedy" of injunctive relief to protect their SPDR, affording to them the inferences to which they are now entitled, the request is adequately framed. Printing Mart, supra, 116 N.J. at 746. Plaintiff has presented scenarios where, should American Dream be fully operational, operation and use of the Stadium on game days could result in severe adverse effects. Again, while it is far from clear plaintiffs will be able to meet the demanding standard required for injunctive relief, at this stage in the litigation it cannot be said they have no legal basis for recovery. Edwards, supra, 357 N.J. Super. at 202.

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[49] Mr. Mara's full statement notes:

> "We've said all along that we have no objection to [American Dream] commencing. We're just concerned about game days and the ability of our fans to get in and out of [the Meadowlands Complex]. That's all this has ever been about."
>
> [Pearlson Cert., Ex. A.]

The Teams also note, in their opposition brief, "the Teams have consistently made clear that they do not seek to stop the American Dream project, but to obtain reasonable accommodations on the few days each year when upwards of 80,000 fans attend NFL games and other large events at MetLife Stadium." (Opp. Br. at 2.) Mr. Mara also certifies: "[a]s I told the NJSEA . . . the Teams' concerns relate primarily to traffic and parking conditions on the relatively few days when NFL games or other events are held at MetLife Stadium." (Mara Cert ¶ 15.) Plaintiffs anticipate approximately 35 major events will take place each year. (Compl. ¶ 25.)

Similarly, plaintiffs have met the pleading standard for the irreparable harm. While it may be that plaintiff will not be able to show that its injuries cannot, as required by Crowe, supra, 90 N.J. at 132-133, be redressed adequately through monetary relief, it is ***possible*** that plaintiff could show such an injury by the end of this case. It is possible American Dream could so fundamentally alter the Meadowlands on game days that no amount of monetary relief would make plaintiff whole. Accordingly, defendants' requests to dismiss plaintiffs' claim for injunctive relief as to the Developers operation of American Dream is denied.

Plaintiff shall be permitted to replead a modified version of their injunctive relief within 20 days of this decision striking their request for injunctive relief as to construction of American Dream, if they so wish.

b. Tortious Interference

The Developers' request to dismiss plaintiffs' claim for tortious interference is again denied for the reasons heretofore set forth. It cannot be said that plaintiffs have failed to sufficiently plead the requisite elements of the tort. Plaintiffs allege the Developers acted with malicious intent in planning the development of and seeking approval for American Dream knowing that plaintiffs did not consent to the proposal, contrary to the Cooperation Agreement of which the Developers were aware. Regardless of whether plaintiffs will ultimately succeed on their tortious interference claim, they have met the liberal pleading standard set forth in Printing Mart, supra, 116 N.J. at 757.[50]

C. More Definite Statement

Defendants' request for a more definite statement pursuant to R. 4:6-4(a) is denied. Plaintiffs claim that defendants violated plaintiffs' SPDR, which are purportedly broad in scope,

[50] It should also be noted that plaintiffs have clearly stated a claim for breach of contract, and accordingly this aspect of the Developers' motion need not be addressed in detail. The Developers' motion to dismiss this claim pursuant to R. 4:6-2(e) is denied.

by not obtaining consent to a modification that could have an effect on plaintiffs' operation and use of MetLife Stadium. While plaintiffs' claims are somewhat broadly stated, a more definite statement is not necessary as defendants can, through targeted interrogatories or other discovery, require plaintiffs to elaborate on how their SPDR will be affected by American Dream and support their theory their "use and operation" rights exceed the scope of the Ground Lease, and, if so, what specific rights are so implicated.

D. Summary Judgment

The Developers' motion for summary judgment is denied. As discussed in detail above, the administrative record is neither dispositive as to plaintiffs' breach of contract claim nor their claim for tortious interference. It is unclear at this point what weight will be given to the NJSEA's administrative findings or the evidence presented to the NJSEA; however, it ***is*** clear that the evidence presented is insufficient for purposes of summary judgment as there are material issues of fact—notably, whether the proposed modification will cause "adverse effects" on plaintiffs' SPDR—yet to be determined. This court is not required, and does not possess the authority, to determine whether the hearing was full and fair. What ***is*** clear, however, is that NJSEA could properly determine whether it would approve, disapprove, or modify the proposed modification. Whether that modification will result in a breach of contract is an issue that must, for the reasons stated above, be decided by this court, and plaintiffs are entitled to discovery as to that determination.

Conclusion

This case is a matter of significant public interest. As such, the parties are encouraged to proceed to mediation in good faith and, hopefully, will be able to resolve any differences that may exist. As it appears there may only be approximately thirty-five (35) events of concern to

plaintiffs, the same would suggest that reasonable parties, with reasonable positions, should be able to achieve a resolution that is satisfactory to all, with the understanding that in any resolution no party can reasonably expect to receive all that it wishes.

Failing the same, though, this court intends, and fully expects, to bring this matter to a final resolution within one year of the filing of the complaint. Hopefully, if not necessarily expectedly, this shall be unnecessary.

Defendants' motions to dismiss are denied. The NJSEA's finding of "adverse effect" shall not be binding on this court. The Developers' motion for summary judgment is denied. The NJSEA's request for a more definite statement is denied. Plaintiffs' request for a preliminary injunction precluding construction of American Dream is stricken. As defendants filed their motions to dismiss in lieu of an answer pursuant to R. 4:6-2, they are hereby compelled to file their answers within ten (10) days of the date of this opinion. Plaintiffs are directed to submit an order in conformity with this decision.