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June 1, 2018

George T. Daggett, Esq.
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VIA E-MAIL gtd@daggettlawyer.com & REGULAR MAIL

**Re: MICHAEL STRADA VS. SUSSEX COUNTY BOARD OF CHOSEN FREEHOLDERS, ET AL.
DOCKET NO.: SSX-L-213-18**

Dear Mr. Daggett:

This is a formal demand for your client and your law firm to withdraw the pleadings in this matter with respect to individual Defendants, George F. Graham (“Graham”), Jonathan M. Rose (“Rose”), Carl F. Lazzaro (“Lazzaro”), and Robert Mikas (sic) (“Maikis”), collectively the “Individual Defendants”.

Your Complaint and Jury Demand dated April 24, 2018 (“Complaint”) alleges that these individuals “interfered in the operation of the Sheriff’s Office” (First Count), “created a hostile work environment” (Second Count), and retaliated “for the Sheriff having reported illegal activities of the Defendants” (Third Count). These are frivolous claims as defined by Court Rule (R. 1:4-8) and statute (N.J.S.A. 2A:15-59.1).

N.J.S.A. 2A:15-59.1 allows an award of attorney’s fees in a lawsuit where a non-prevailing party asserts a claim “in bad faith, solely for the purpose of harassment, delay or malicious injury,” N.J.S.A. 2A:15-59.1b(1); or if the non-prevailing party knew, or should have known, that the complaint was without any reasonable basis in law or in equity.” N.J.S.A. 2A:15-59.1b(2). McKeown-Brand v. Trump Castle Hotel & Casino, 132 N.J. 546 (1992); United Hearts v. Zahabian, 407 N.J. Super. 379 (App. Div. 2009).

This litigation was also filed without probable cause and honest belief in its allegations. “Honest belief” means, “using the reasonable prudent person standard, a reasonable belief that there was a good or sound chance of

establishing the claim to the satisfaction of the court or the jury.” Id. at 93, citing Westhoff v. Kerr S.S. Co., 219 N.J. Super. 316, 321 (App. Div.), cert. den., 109 N.J. 503 (1987).

STATEMENT OF FACTS

A. THE SHERIFF’S “HOSTILE” WORK ENVIRONMENT”

The Complaint contains 75 paragraphs with a list of approximately 13 actions that the Sheriff interprets as hostile/offensive:

1. Defendant Maikis “hung up on him” (Complaint, par. 6);
 2. The County’s insurance company requested a video from him (Id. par. 7);
 3. Defendant Maikis denied his \$50.00 reimbursement request for a political donation (Id. par. 11); (the Sheriff presently has a balance of \$42,600.99 in his campaign account);
 4. Wantage Township signed up with Vernon for dispatch services (Id. pars. 12-18, 25);
 5. The Sheriff attended a regular meeting of the County Republican Committee and threatened to sue the Freeholders in June 2017 (Id. pars. 29-31);
 6. The Sheriff had breakfast with Freeholder Petillo in August 2017 and she “listened” to him. (Id. pars. 32-34);
 7. The Prosecutor’s Office and County Administrator questioned the Sheriff after a brutal beating of an inmate at the jail by his Officers was publicly disclosed by a newspaper. (Id. pars. 38-43);
 8. The Freeholders provided the Sheriff with IT support. (Id. 46-50);
 9. The Freeholders unanimously voted to release Executive Session meeting minutes in October 2017 with respect to the brutal inmate beating by the Sheriff’s Officers. (Id. pars. 51-56);
 10. The County Administrator conducted an investigation in response to the Sheriff’s request that he do so. (Id. pars. 57-62);
 11. The Freeholder Board questioned a Sheriff’s employee in 2017 (Id. pars. 65-66);
 12. The Sheriff received 3 new cars in 2017 and the Sheriff wants his own new car (Id. pars. 67-70);
- and
13. Defendant Graham complimented the Sheriff’s response to a disastrous storm in 2018 (Id. pars. 71-75).

B. THE SHERIFF’S NEED FOR “CONFLICT” COUNSEL

The Sussex County Administrative Code provides that “County Counsel shall be the chief legal advisor to the Board and the Constitutional Officers.” [Code: sec. 2.10]. The duties of County Counsel requires representation of “the Constitutional Officers in all legal matters related to their official duties.” [Code: sec. 2.10(e)]

At paragraphs 19, 20, 21, 22, 23, 24, 27 and 64 of his Complaint, the Sheriff complains about his perceived need for his own private attorney. The reason for this is his inability to get along with present County Counsel John Williams and the 3 Assistant County Counsellors who are paid to provide legal services to all County personnel. The Sheriff had the same problems with predecessor County Counsel Dennis McConnell. In fact, the Freeholder Board has provided private “conflict” counsel to the Sheriff since 2012 and he remains the only person in the County government to enjoy this status.

C. THE SHERIFF SINGLES OUT THREE FREEHOLDERS FOR PERSONAL LIABILITY DURING A CONTESTED PRIMARY ELECTION

The Sheriff has publicly endorsed and donated to the political campaigns of Josh Hertzberg and Dawn Fantasia, who are opposing/challenging incumbent Republican Freeholders Rose and Lazzaro in this year’s contested primary election on June 5, 2018. Graham provides political support and assistance to Rose and Lazzaro.

The Sheriff’s Complaint was filed 43 days before this election:

1. George Graham: Graham is identified in 9 separate paragraphs of the Sheriff’s Complaint (5, 15, 16, 17, 25, 39, 61, 74, 75); in 7 of these paragraphs, the allegations simply recite conversations between the Sheriff and this Freeholder in the course of their public employment. Nowhere is it alleged that Graham actually did anything to cause any harm to the Sheriff other than engage in conversations about public events.

2. Carl Lazzaro: Lazzaro is identified in 3 separate paragraphs of the Sheriff’s Complaint (5, 31, 29). Paragraph 5 alleges that Lazzaro “met” with the Sheriff. Paragraph 31 alleges that Lazzaro did not “speak” at a political meeting. Paragraph 39 alleges that Lazzaro “talked to” the “Prosecutor” at a public event.

3. Jonathan Rose: Rose is identified in 1 paragraph of the Sheriff’s Complaint (51). He is alleged to have “sponsored” a resolution at a public Freeholder meeting in his capacity as Freeholder Director.

4. Robert Mikas (sic): Maikis is identified in 5 paragraphs of the Sheriff’s Complaint (4, 5, 6, 10, 11). Paragraphs 4, 5, 6 and 10 allege that Maikis “interferes” with the Sheriff. The only action alleged against Maikis is his denial of the Sheriff’s \$50.00 reimbursement for a personal political contribution.

By way of comparison, the Sheriff personally identifies County Administrator Gregory Poff in 10 paragraphs of his Complaint (27, 28, 40, 41, 43, 44, 45, 57, 58 and 59). The Sheriff personally identifies County Counsel John Williams in 13 paragraphs of his Complaint (8, 9, 19, 20, 21, 25, 26, 44, 45, 53, 54, 55 and 70). Neither is included as an individual Defendant; that distinction is limited to the 3 politicians and the county treasurer.

These interactions among public officials are simply not actionable.

LEGAL ARGUMENT

POINT ONE: THE COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AGAINST THESE INDIVIDUAL DEENDANTS

Where the Complaint states no basis for relief and discovery would not provide one, dismissal of the Complaint is warranted pursuant to R. 4:6-2(e). Energy Rec. v. Dept. of Environmental Protection, 320 N.J. Super. 59 (App. Div. 1999), *aff'd* d.o.b. 170 N.J. 246 (2001).

The Complaint fails to provide any factual support for a claim of interference with the Sheriff's Office. The First Count alleges "interference prohibited by statute"; however, it does not include any statutory references. To the extent that this statute is later designated as N.J.S.A. 40A:9-117, the Complaint fails to allege or meet any of the criteria established in Bergen County PBA Local 134 v. Donovan, 436 N.J. Super. 187 (App. Div. 2014) or Communication Workers of America v. Treffinger, 291 N.J. Super. 336 (Law Div. 1996) for actual interference with the performance of the Sheriff's duties.

The claim in the Second Count with respect to a "hostile work environment" requires conduct "sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Mandel v. UBS/Paine Webber Inc., 373 N.J. Super. 55 (App. Div. 2004). These claims cannot be established by comments that are "merely offensive, discourteous or rude." A lack of sensitivity, or an overly sensitive "victim", does not have this cause of action. Id. at 73.

The CEPA claim in the Third Count requires: "a reasonable belief that the employer's conduct violated a law, regulation or public policy, whistle-blowing activity described in N.J.S.A. 34:19-3(a) or (e), or an adverse employment action." Klein v. UMDNJ, 377 N.J. Super. 28 (App. Div.), *certif. den.* 185 N.J. 39 (2005). None of these things happened to the Sheriff.

POINT TWO: THESE INDIVIDUAL DEFNDANTS HAVE QUALIFIED IMMUNITY

"Government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." Harlow v. Fitzgerald, 457 U.S. 800 (1982).

At all times, the Individual Defendants also relief upon the advice of their counsel.

**POINT THREE: THESE INDIVIDUAL DEFENDANTS
HAVE NO PERSONAL LIABILITY**

Under New Jersey law, it is well settled that not only is a corporation a separate entity from its shareholders, but that one of the primary reasons for incorporation is to insulate shareholders from the liabilities of the corporate enterprise. State of N.J., Dept. of Env'tl. Prot. V. Ventron Corp., 94 N.J. 473, 500 (1983). "In the absence of fraud or injustice, courts generally will not pierce a corporate veil to impose liability on the corporate principals." Id. (citing Lyon v. Barrett, 89 N.J. 294, 300 (1992)). Thus, Plaintiff must satisfy the heavy burden of establishing "clear and convincing evidence" for piercing the corporate veil. D.R. Horton Inc. – New Jersey v. Dynastar Dev., L.L.C., MER-L-1808-00, 2005 WL 1939778, *22-24 (N.J. Super. Ct. Law Div. Aug. 10, 2005).

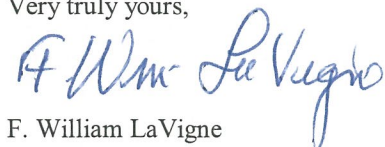
The New Jersey Supreme Court established a two-part test to determine whether a business entity was used to perpetrate a fraud. See Ventron Corp., 94 N.J. at 500. First, the plaintiff must prove that the business entity was "a mere instrumentality or alter ego of its owner." D.R. Horton Inc. – New Jersey, MER-L-1808-00, 2005 WL 1939778, at *28 (citing Ventron Corp., 94 N.J. at 501). The Sheriff could not prove that Sussex County is "a mere instrumentality or alter ego" of the Individual Defendants.

CONCLUSION

An allegation is deemed "frivolous" where "no rational argument can be advanced in its support, or where it is not supported by any credible evidence, or it is completely untenable." Fagas v. Scott, 251 N.J. Super. 169 (Law Div. 1991).

For all these factual and legal reasons, we demand the withdrawal of your Complaint and Jury Demand within 28 days of your receipt of this correspondence pursuant to R. 1:4-8(b)(1).

Very truly yours,


F. William LaVigne

FWL/jk

cc: George F. Graham
Jonathan M. Rose
Carl F. Lazzaro
Robert Maikis