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STEVEN ALLEN HEDAYA and EMILIE HEDAYA,

Plaintiffs,

vs.

OCEAN TOWNSHIP ZONING BOARD OF
ADJUSTMENT; LARCHWOOD SYNAGOGUE,
INC. (F/K/A "LARCHWOOD MINYAN, INC.");
MARK MASSRY; SAM COHEN and SUZANNE
COHEN,

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION – CIVIL PART
MONMOUTH COUNTY

DOCKET NO. MON-L-1688-22

Civil Action:

**FIRST AMENDED COMPLAINT AND
COMPLAINT IN LIEU OF PREROGATIVE WRITS**

Plaintiffs Steven Allen Hedaya and Emilie Hedaya, by way of First Amended Complaint and Complaint in Lieu of Prerogative Writs against the defendants named herein says as follows:

THE PARTIES:

1. Plaintiffs Steven Allen Hedaya and Emilie Hedaya (hereinafter collectively in the singular "plaintiff") presently resides at 7 Old Farm Road in the Township of Ocean (Oakhurst),

County of Monmouth and State of New Jersey. Plaintiff formerly resided at 4 Old Farm Road in the Township of Ocean (Oakhurst), County of Monmouth and State of New Jersey.

2. Defendant Ocean Township Zoning Board of Adjustment is a subdivision of the municipal corporation Township of Ocean. This defendant's principal place of business is located at 399 Monmouth Road in the Township of Ocean (Oakhurst), County of Monmouth and State of New Jersey.
3. Defendant Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc.") is a not-for-profit corporation of the State of New Jersey with principal place of business located at 8 Industrial Way East – 2nd Floor, in the Borough of Eatontown, County of Monmouth and State of New Jersey. This defendant was originally formed as "Larchwood Minyan, Inc.", but pursuant to a Certificate of Amendment to the Certificate of Incorporation of Larchwood Minyan, Inc., filed with the New Jersey Department of State, Division of Revenue on December 8, 2017, the Certificate of Incorporation was formally amended pursuant to *N.J.S.A.* 15A:0-4 to thereafter be "Larchwood Synagogue, Inc.". Otherwise stated, defendant Larchwood Synagogue, Inc. is not a successor corporation but is literally the same corporation albeit now proceeding with the different name. Defendant Larchwood Synagogue, Inc. is therefore fully and, in all respects, responsible and legally liable for the contract between plaintiffs and the former named Larchwood Minyan, Inc.
4. Defendant Mark Massry is sued both individually and in his capacity as a Board Member of defendants Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc."). This defendant resides at 101 Larchwood Avenue in the Township of Ocean (Oakhurst), County of Monmouth and State of New Jersey.

5. Sam Cohen is sued individually and resides at 4 Old Farm Road in the Township of Ocean (Oakhurst), County of Monmouth and State of New Jersey.
6. Suzanne Cohen is sued individually and resides at 4 Old farm Road in the Township of Ocean (Oakhurst), County of Monmouth and State of New Jersey.

THE FACTS:

1. This matter involves two separate parcels of adjoining real identified as Block: 8.07 Lots: 23 & 3 on the Official Tax Map of the Township of Ocean, County of Monmouth and State of New Jersey, commonly identified together as 48 Larchwood Avenue, Ocean, New Jersey. Lot 23 faces and has street frontage on Larchwood Avenue, and Lot 3 is located behind it and has street frontage on Old Farm Road where such road runs parallel one block over from Larchwood Avenue.
2. Both Lots 23 & 3 are located in the Township of Ocean “R-1 Low Density Single Family Residential Zone” (hereinafter “R-1 zone”). A “House of Worship” is a permitted use in the R-1 Zone “... subject to approval of the Planning Board and the special conditions of this chapter.” (Emphasis added). (See **Township of Ocean NJ / Land Development / Land Development Ordinance, Article IV (ZONING PROVISIONS), at §21-22(c)(3)**).
 - A. **The 2013 Application for Approval to Convert a Single-Family House in the R-1 Zone into a Synagogue, the Settlement Contract with Plaintiff, the Deed Restriction, and the Specific Express Limitations and Conditions Imposed by the Zoning Board of Adjustment as Part of the Approval all Memorialized by Board Resolution:**
3. In calendar year 2013 The defendant Larchwood Minyan, Inc. applied for certain conditional use variances, site plan and bulk variance seeking approval to convert a the

then existing single family residence on Lot 23 (facing Larchwood Avenue) into a “House of Worship” (Synagogue) with seating for 228 persons.

4. A true and accurate copy of the Notice of Hearing in the application to the Ocean Township Zoning Board of Adjustment from *In the Matter of the Application of Larchwood Minyan, Inc. for Premises Known as LOTS 3 and 23 in BLOCK 8.02 on the Official Tax Map of the Township of Ocean dated May 14, 2013* (hereinafter referred to as “the 2013 Plan”) is attached hereto and made a part hereof as if set forth fully at length herein.

5. The March 14, 2013 Notice of Hearing advises that:

Applicant seeks Conditional Use Approval for a House of Worship/Shabbot Prayers in the R-1 zone together with Preliminary and Final Site Plan approval to convert the existing residential building for religious uses and construct a 631.3 square foot addition to the front of the structure, an exterior basement entrance in the rear of the building and a handicapped accessible ramp and entrance to the front.

[See “Exhibit A”].

6. The March 14, 2013 Notice of Hearing further advises and lists the many variances (at least 6) and waivers (at least 8) that the defendant Ocean Township Zoning Board of Adjustment would have to approve for the ambitious project, as submitted, to be approved. (See “Exhibit A”).

7. Plaintiff Steven Allen Hedaya (hereinafter “plaintiff”) resided at 7 Old Farm Road, an address in direct proximity to the proposed project and also owned property at 4 Old Farm Road. Appeared personally and with the assistance of private counsel, formally objected to this application as an “interested party”. In so plaintiff was appearing and had standing as an “interested party” as defined in the New Jersey Municipal Land use Law (hereinafter “MLUL”).

8. For purposes of the MLUL plaintiff qualified then and qualifies still now as an “interested party” which is defined in the law as:

... in the case of a civil proceeding in any court ... any person, whether residing within or without the municipality, who’s right to use, acquire, or enjoy property is or may be affected by any action taken under this act, or whose rights to use, acquire, or enjoy property under this act, ... have been denied, violated or infringed by an action or failure to act under this act.

[N.J.S.A. 40:55D-4].

9. The 2013 Plan as submitted would never have been approved on its own relative merits. Additionally, plaintiff, with the assistance of counsel, was an active objector and pointed out the many and diverse deficiencies and the over-reaching of defendant Larchwood Minyan, Inc. in trying to obtain approvals to build such a large House of Worship (Synagogue) right in the middle of the R-1 Zone which was specifically designated to permit only low-density single-family homes.
10. At the direction of his client, the attorney for defendant Larchwood Minyan, Inc. contacted the attorney for plaintiff asking what if any conditions the parties could possibly agree to that would permit defendant Larchwood Minyan, Inc. to bring forward an application to convert the existing single-family house into a House of Worship (Synagogue). After a series of meetings and discussions and negotiations during which plaintiff, through his attorney, made his factual and legal position clear, the attorney for defendant Larchwood Minyan, Inc. brought forward a proposal wherein defendant Larchwood Minyan, Inc. would agree to greatly scale back the initial proposed that would also include a specific numbered “punch list” of permanent limitations and conditions on the future use of Lots:

3 & 23 in an attempt to try to satisfy plaintiff and the concerns of other members of the community.

11. Ultimately, defendant Larchwood Minyan, Inc. agreed to cut back their request and limit their application to seeking approvals to build a 632 square foot single story addition to the front of the existing single-story building so as to build a new ADA accessible ramp and to construct a new exterior entrance to the existing single story building basement area. Defendant Larchwood Minyan, Inc. also agreed to seek permission to remove the then existing pool, tennis court, fence, basketball court and fence, shuffleboard court, and other recreational amenities. This way, the size and architecture of the single-story House of Worship (Synagogue) would remain a single-story structure of limited size (permitting limited traffic) and would be in keeping with the architecture of the other single-family homes in the proximity generally and the R-1 Zone specifically. In addition, defendant Larchwood Minyan, Inc. agreed in a signed writing by Settlement Agreement Contract with plaintiff to “permanently” limit the possible future use and development of Lots: 3 & 23 so that there never would be any efforts to greatly expand the limited size the single-story House of Worship (Synagogue) as follows:

*** ... Larchwood Minyan, Inc. ... agrees to:

1. Attempt to have the Application regarding the House of Worship granted as to Block 8.02, Lot 23 will be the only lot upon which a House of Worship can be located and operate. Block 8.02, Lot 3 will be utilized for the walkway from Old Farm Road to Lot 23.
2. Block 8.02 Lot 3 would remain a single-family lot, and if Lot 3 is ever developed going forward, it will only be developed as a single-family home. In the event the Applicant leaves Lot 23 Block 8.02 and the premises are again utilized as a single-family

residence, then Lot 3 can be used for recreational facilities in conjunction with Lot 23 pursuant to the approvals previously granted to them by the Resolution of the Zoning Board of Adjustment. If and when Block 8.02 Lot 3 is developed as a single-family residence, the walkway from Old Farm Road to Lot 23 will be removed.

3. The applicant will only use Lot 3 for the purposes of a pathway to the House of Worship on Lot 23. As part of any approval, Applicant will remove the shuffleboard court, the basketball court and tennis court and will paint and/or otherwise improve the appearance of the pool house and will also cause an estate style fence to be placed around the pool so that it is not accessible by anyone walking along the pathway from Old Farm Road to the House of Worship on Lot 23.
4. The use and operation of the House of Worship will be limited to Sabbath services and other religious holidays during the course of the year and will not be utilized for any other purposes. The facility shall not operate as a Yeshiva.
5. The House of Worship and the grounds of Lot 23 and Lot 3 will not be utilized in any way shape or form for the conduct of a camp, or other recreational activities, nor will it be used for weddings, Bar or Bat Mitzvahs or similar services or religious events.
6. If the House of Worship on Larchwood Avenue ever seeks to expand, it can only expand on Lot 23 and not onto Lot 3. Any expansion on Lot 23 must receive Zoning Board of Adjustment approval.
7. Objectors do not have any objections to the tenant utilizing an air-conditioned tent on Lot 3 during the High Holidays for the year 2013 (i.e., ten days, after which it will be taken down and removed from the property).
8. This Agreement will be recorded with the Resolution in the Monmouth County Clerk's Office.

[See "Exhibit B" attached hereto].

12. This Settlement Agreement Contract with plaintiff, drafted by the attorney for defendant Larchwood Minyan, Inc., was then signed by the parties effective July 31, 2013 with

defendant Isaac Massry signing on behalf of and binding defendant Larchwood Minyan, Inc. to the terms and conditions of the Settlement Agreement Contract. (See “Exhibit B”).

13. As required by ¶8 of the Settlement Agreement Contract and the permanent future limiting conditions on development and use of Lots: 3 & 23, the eight (8) enumerated limiting conditions were incorporated into a longer document entitled “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey” which longer document was then filed of record with the Monmouth County Clerk’s Office with property records relative to such properties on August 12, 2013 as Instrument No. 2013090448 at BOOK: OR-9030 PAGE: 5130 (total 6 pages) for a filing fee of \$80.00 which was paid by defendant Lakewood Minyan, Inc. (See “Exhibit B”).
14. The July 31, 2013 Settlement Agreement Contract and the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk, was then presented to defendant Ocean Township Zoning Board of Adjustment along with the much scaled back plan for development of a House of Worship (Synagogue) on Lot 23 only, but not with no “interested party” objecting or otherwise challenging the application or threatening litigation by way of appeal of any approvals granted.
15. By Resolution dated September 12, 2013, the defendant Ocean Township Zoning Board of Adjustment granted the scaled back application of the defendant Larchwood Minyan, Inc. to construct a 632 square foot addition to the front of the existing building so as to build a new ADA accessible ramp, to construct a new exterior entrance to the existing basement area, and permission to remove the then existing pool, tennis court, fence, basketball court and fence, shuffleboard court, and other recreational amenities. In so doing, the defendant

Ocean Township Zoning Board of Adjustment granted the required variances and waivers, and added several specific permanent conditions to the approvals, including that which was agreed to by plaintiff and defendant Larchwood Minyan, Inc. in the July 31, 2013 Settlement Agreement Contract and the “PROPEY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk. (See “Exhibit C”).

16. The defendant Ocean Township Zoning Board of Adjustment Resolution dated September 12, 2013 contained a list of nine (9) specific conditions imposed in the Applicant defendant Larchwood Minyan, Inc. which were a further condition and requirement of the granting of the application to convert the existing single-story single-family house into a House of Worship (Synagogue) as follows:

... [The Application is] hereby approved, subject to the following conditions:

1. Applicant to revise plans to provide up to 5 feet wide walkway and same to be installed with required cross section, in a proper manner, level with existing topography, subject to review and approval of the Board Engineer.
2. Applicant to install additional lighting as may be required to meet Ordinance requirements and all exterior lighting to be placed on a timer so as not to be in use when the building will not be in use for religious services, all subject to the review and approval of the Board Engineer.
3. The pool fence to be kept locked at all times with padlock or similar device.
4. Applicant to provide alternate landscaping material as shall be determined and approved by the Township Planner.
5. Applicant to remove tennis court and fence, basketball court and fence, if any, shuffleboard court and all other recreational amenities on site other than the pool and pool house which shall be fenced and

- locked, as aforesaid, with said construction be subject to the review and approval of the Borough Engineer.
6. The site is limited to a House of Worship for the Jewish Orthodox faith and only on the Sabbath which runs from sundown Friday through sundown Saturday and on Jewish Holidays only; with no use of the facilities for the traditional daily service in the morning and evening hours during the week or on Sunday, except on Jewish Holidays; no use of the facility during the week for educational classes; no use for a catering facility for parties and no use the property for receptions celebrations such as wedding, bar mitzvah, or bris; no use of the site for a summer camp or any other outdoor recreational facility; and the Applicant shall remove the tennis court, basketball court, and other amenities on the site other than the pool and pool house, both of which will be secured so as not be usable.
 7. Applicant shall instruct its congregants not to park along Larchwood Avenue before and after religious services, it being the intention of the Applicant that all of its congregants walk to the site and do not use motor vehicles to access same.
 8. Applicant to provide a Deed restriction as to the use of the site for only a Jewish Orthodox House of Worship and Lot 3 shall remain part of the approved plan and cannot be sold separately as long as the facility on Lot 23 shall continue to operate as a Jewish Orthodox House of Worship. Same is to be approved by the Board's attorney and recorded in the Monmouth County Clerk's Office. In the event said use shall change from a Jewish Orthodox Synagogue, Zoning Board of Adjustment approval shall be required for said change in use, if it is not a permitted residential use.
 9. Subject the Agreement (sic) by and between the owners of the within site, David R. Braha and Renee Braha and adjacent property owner, Steven Allen Hedaya and Emilie Hedaya, dated July 31, 2013, resolving any objections to the within approval, together with this Resolution, being recorded in the Monmouth County Clerk's Office and the conditions stated in the Agreement being supplemental to any of

the conditions required by this Board and made a part hereof as if set forth herein at length.

[See “Exhibit C”, Conditions, ¶1, ¶2, ¶3, ¶4, ¶5, ¶6, ¶7, ¶8 & ¶9].

17. By defendant Ocean Township Zoning Board of Adjustment specifically and expressly adopting the conditions agreed to by the plaintiff and Applicant Larchwood Minyan, Inc. in the July 31, 2013 Settlement Agreement Contract and the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk, and incorporating same into and as a part of the approval Resolution at Conditions ¶8 & ¶9, the defendant Ocean Township Zoning Board of Adjustment made such separately stated eight (8) conditions a part of the actual September 12, 2013 approval Resolution.1
18. Since then a religious Jewish Synagogue has been operated from Lot 23 only and appears to have voluntarily “substantially” complied, albeit not completely, with all restrictions and conditions imposed as a condition of the approval, including the Sales Agreement Contract with plaintiff, the Restrictive Covenant / Deed Restriction found in the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk, and the conditions imposed in the approval Resolution of the Zoning Board of Adjustment.
19. Today the two properties (Lots: 3 & 23) are collectively assessed as one “line item” (i.e., together) by the Tax Assessor and are collectively assessed at \$2,554,900.00. However, both lots have been ruled as statutorily exempt from the obligation to pay real property tax under N.J.S.A. 54:04-3.06.

20. On or about March 17, 2017 plaintiff sold his property located at 4 Old Farm Road to defendants Sam Cohen and Suzanne Cohen.
21. Defendant lived at 7 Old Farm Road, but also owned another house a few hundred feet on the other side of Lot: 3.
22. Apparently thereafter, on November 21, 2019, with no factual or legal right to do so, and with no notice to plaintiff who has privity of contract and who by virtue of his living at 7 Old Farm Road within a few hundred feet of Lot: 3 retains his legal status as an "interested party", defendants Sam Cohen and Suzanne Cohen signed a four (4) page document entitled "MODIFICATION OF PROPERTY AGREEMENT RE: Block 8.02, Lots 2 and 23 Ocean Township, New Jersey" where, for consideration of \$10.00, defendants Sam Cohen and Suzanne Cohen claim to have vacated all of the conditions contained in the Settlement Agreement Contract which was incorporated into the "PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey", now filed with the County Clerk, and the conditions imposed in the approval Resolution of the Zoning Board of Adjustment. (See "Exhibit D"). Sam and Suzanne Cohen were not signatories to the 2013 agreement (Contract). This document was a mere five years after the amended Resolution.
23. The November 21, 2019 "MODIFICATION OF PROPERTY AGREEMENT RE: Block 8.02, Lots 2 and 23 Ocean Township, New Jersey" signed by defendants Sam Cohen and Suzanne Cohen is void ab initio and has no legal effect whatsoever.

B. The Outrageous and duplicitous 2022 Application to the Zoning Board of Adjustment for Approval to now Triple the Size of the Synagogue Structure in the R-1 Residential Zone and to Construct a Building on Lot: 3 in Violation of the Settlement Agreement Contract with

Plaintiff, the Restrictive Covenant / Deed Restriction and the 2013 Conditions Imposed by the Zoning Board of Adjustment Resolution:

24. Defendants Larchwood Minyan, Inc., Larchwood Synagogue, Inc., Mark Massry, and Isaac Massry, are all well aware of the factual and legal reality that they are bound by the July 31, 2013 Settlement Agreement Contract with plaintiff, and are bound by the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk, and are bound by the September 12, 2013 Resolution of the Zoning Board of Adjustment.
25. Defendants Larchwood Minyan, Inc., Larchwood Synagogue, Inc., Mark Massry, and Isaac Massry are all well aware of the factual and legal reality that the November 21, 2019 “MODIFICATION OF PROPERTY AGREEMENT RE: Block 8.02, Lots 2 and 23 Ocean Township, New Jersey” signed by defendants Sam Cohen and Suzanne Cohen is void ab initio and has no legal effect whatsoever.
26. Defendants Larchwood Minyan, Inc., Larchwood Synagogue, Inc., Mark Massry, and Isaac Massry are all well aware of the factual and legal reality that any application to expand the use on Lot 23 is limited in what may be done, and that no application may be brought to expand anything onto Lot: 3.
27. Nevertheless, such defendants have now filed another application before defendant Ocean Township Zoning Board of Adjustment seeking no less than 23 variances and waives and

seeking to expand the use and construct buildings on Lot: 3 & 23 noticed to the public as follows:

[In 2013 the Zoning Board granted approvals which] include numerous conditions including prayer use limited to sundown Friday through sundown Saturday and Jewish Holidays; no use of the facility for traditional daily prayer services during the week or on Sunday, except for Jewish Holidays; no use during the week for educational classes; no catering for parties or use for events such as weddings, bar mitzvahs or bris; and no use for a summer camp or outdoor recreational use (collectively "Prior Conditions"). ADD Applicant is now seeking preliminary and final site plan approval with conditional use and bulk variance and waiver relief pursuant to permit: construction of approximately 8,723 square foot addition to the existing 3,851 +/- Synagogue Building; demolition of existing 73=57 square foot ancillary building and construction of an additional 2,770 +/- square foot building for use as a Mikveh (ritual bath), an accessory use to the Synagogue; reconfiguring the site circulation and construction of 39 off-street parking spaces; and, construction related site improvements including drainage, lighting and landscaping. Additionally, Applicant also seeks to have previously mentioned Prior Conditions amended / eliminated in order to permit educational classes, traditional daily prayer, services and special services (bar mitzvah, bris) 7 days a week.

[See "Exhibit E"].

28. The application generally and as a whole seeks relief that is barred by law by virtue of the existing and operative July 31, 2013 Settlement Agreement Contract with plaintiff, the "PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey", now filed with the County Clerk, and the September 12, 2013 Resolution of the Zoning Board of Adjustment.
29. Plaintiff has been and is being proximately harmed by the wrongful actions of the defendants in breaching the contractual agreement.

- 30. Moreover, the Public Notice is legally inadequate as there was clearly a conscious decision and attempt by the applicant not to disclose the prior limitations on use that they contractually agreed to, or even the existence of such a contractual agreement whether still in effect or not.
- 31. The applicant further sought amendment to the conditions and limitations placed on the subject properties which restricted the overall operation of the site. The applicant's proposed use is a high increase in the intensity of use of the subject properties as the assemblage of lots are undersized, deficient in width, and many setback and coverage variances are required.
- 32. Specifically, in accordance with the Zoning Ordinance of the Township of Ocean, specifically Chapter 21-51.2, Houses of Worship are required to adhere to the following standards (which are specifically defined in the Zoning Ordinance itself (when located in an R-1 Residential Zone:

A. Zoning Ordinance <u>Bulk Requirements</u>	<u>Proposed project non-conforming standards</u>
Minimum Lot Area: 2 acres	1.61 acres (<i>*when 2 acres required</i>)
Minimum Lot Width: 200 feet	150 feet (<i>*when 200 feet required</i>)
Minimum Lot Depth: 200 feet	*complies
Minimum Front Yard Setback: 25% of lot depth, but no more than <u>65 feet</u>	47.2 feet (<i>*when 65 feet required</i>)
Minimum Side Yard Setback: 50 feet	13.0 feet (<i>*when 50 feet required</i>)
Minimum Rear Yard Setback: 20% of lot depth, but no	

more than 75 feet	*complies
Minimum Building Coverage: 30%	34% (<i>*when maximum 30% permitted</i>)
Maximum Lot Coverage: 75%	98.4% (<i>*when maximum 75% permitted</i>)
Maximum Building Height: 2 stories above grade or 35 feet, whichever is less	*complies
Minimum Residential Buffer Required: 25 feet	11.3 feet (<i>*when minimum 25 feet required</i>)

- 33. Where parking areas are adjacent to a residential zone, a minimum of a twenty-five-foot-wide buffer strip shall be provided. Here, the applicant’s plan calls for only an 11.3-foot buffer, less than half of what is normally required.
- 34. Moreover, under no circumstances are parking lots permitted within a front yard as per Chapter 21-45.12A. Nevertheless, the applicant proposes parking in the front yard.
- 35. The proposed use by 550 persons requires a minimum of 275 off-street parking spaces (1 space required for every 2 seats, or $550 / 2 = 275$ off street parking spaces required). The applicant’s plan proposes only 39 off street parking spaces, 236 less than required.
- 36. While some members may choose to walk, the applicant has no plans to install sidewalks anywhere to accommodate this.
- 37. The applicant’s plan also violates storm water and landscaping requirements.

C. The Two September 15, 2022 Resolutions Approved by Defendant Ocean Township Zoning Board of Adjustment During the Pendency of this Litigation:

- 38. Notwithstanding the harm proximately caused to plaintiffs by the wrongful actions of the defendants, on September 15, 2022 defendant Ocean Township Zoning Board of

Adjustment passed two separate Resolutions essentially approving the project subject to the results of this pending litigation as follows: **(1)** the first September 15, 2022 Resolution was entitled “Resolution of the Zoning Board of Adjustment of the Township of Ocean – Approval of Conditional Use, Amending Prior Approval Conditions and Associated Bulk Variances” **(See true copy attached hereto at “Exhibit F” and made a part hereof as if set forth fully at length herein)** and **(2)** the second September 15, 2022 Resolution was entitled “Resolution of the Zoning Board of Adjustment of the Township of Ocean – Preliminary and Final Site Plan Approval” **(See true copy attached hereto at “Exhibit G” and made a part hereof as if set forth fully at length herein).**

39. Defendants have basically worded a “bait and switch” scheme. In order to secure an approval in 2013 they signed a binding agreement they never intended to be bound by.

CAUSES OF ACTION:

FIRST COUNT:

(Declaratory Judgment – Breach of Contract, Violation of Restrictive Covenant / Deed Restriction, Violation of Zoning Board Resolution, Void Document and Specific Performance)

1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein
2. The Declaratory Judgments Act, *N.J.S.A.* 2A:16-51 et seq., authorizes Courts to declare rights, status and other legal relations regarding interpretation of contracts so as to afford litigants relief from uncertainty and insecurity.
3. *N.J.S.A.* 2A:16-53 provides as follows:

A person . . . whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

[*N.J.S.A. 2A:16-53.*]

4. To maintain such a declaratory judgment action, there must be a "justiciable controversy" between adverse parties, and the plaintiffs must have an interest in the suit. *See Chamber of Commerce v. State*, 89 N.J. 131, 140 (1982). These two requirements are clearly satisfied here in this case.
5. In the present case the defendants have without factual, legal, or equitable excuse materially breached the July 31, 2013 Settlement Agreement Contract between the parties, have and are seeking to materially violate the terms and conditions of the "PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey", now filed with the County Clerk, and the conditions imposed in the approval Resolution of the Zoning Board of Adjustment.
6. The November 21, 2019 "MODIFICATION OF PROPERTY AGREEMENT RE: Block 8.02, Lots 2 and 23 Ocean Township, New Jersey" signed by defendants Sam Cohen and Suzanne Cohen is *void ab initio* and has no legal effect whatsoever. Sam Cohen and Suzanne Cohen were not a party to the 2013 agreement.

7. Defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) is seeking to illegally and in breach of contract and in bad faith materially violate the terms and conditions of the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk, and the conditions imposed in the approval Resolution of the Zoning Board of Adjustment. Their actions are “outrageous.”

WHEREFORE, plaintiffs demand judgment against defendants Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) and Sam Cohen and Suzanne Cohen as follows:

- A.) An Order pursuant to the authority of *N.J.S.A. 2A:16-51 et seq.* (the New Jersey Declaratory Judgments Act) declaring that the July 31, 2013 Settlement Agreement Contract between plaintiff and defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) regarding future restrictions on use and limitations on use of Block: 8.02 Lots: 3 & 23 is fully enforceable and directing defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) to specifically perform in accordance with, and to honor and abide by, their contractual obligations under said Settlement Agreement Contract;
- B.) An Order pursuant to the authority of *N.J.S.A. 2A:16-51 et seq.* (the New Jersey Declaratory Judgments Act) declaring that the July 31, 2013 Restrictive Covenant / Deed Restriction (filed with the Monmouth County Clerk on August 12, 2013 as Instrument No. 2013090448, found at BOOK: OR-9030, PAGE: 5130 (total 6 pages)) which memorializes the Settlement Agreement Contract dated July 31, 2013 regarding future restrictions on use and limitations on use of Block: 8.02 Lots: 3 & 23 is fully enforceable and directing

defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) to specifically perform in accordance with their contractual obligations under said Restrictive Covenant / Deed Restriction; and

- C.) An Order pursuant to the authority of *N.J.S.A.* 2A:16-51 et seq. (the New Jersey Declaratory Judgments Act declaring that the restrictions and conditions contained in the September 12, 2013 RESOLUTION OF THE ZONING BOARD OF ADJUSTMENT OF THE TOWNSHIP OF OCEAN are fully enforceable and directing defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) to specifically comply with the law; and
- D.) An Order pursuant to the authority of *N.J.S.A.* 2A:16-51 et seq. (the New Jersey Declaratory Judgments Act declaring that the November 21, 2019 “MODIFICATION OF PROPERTY USE AGREEMENT – RE: Block 8.02, Lots 3 and 23, Ocean Township, New Jersey” between Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) and Sam Cohen and Suzanne Cohen is *void ab initio* and that such document has no legal effect whatsoever and is a nullity; and
- E.) Judgment awarding attorney’s fees and costs of suit; and
- F.) Judgment awarding such other further relief as the Court deems fair, just and equitable.

SECOND COUNT:
(Breach of Contract – Damages)

- 1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein

2. Defendants Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) have without factual, legal or equitable excuse breached and are attempting to breach their Settlement Agreement Contract with Plaintiff and have also without factual, legal or equitable excuse breached the “PROPERTY USE AGREEMENT RE: Block 8.02, Lots 3 & 23 Ocean Township, New Jersey”, now filed with the County Clerk.
3. Plaintiff has been proximately damaged thereby.

WHEREFORE, plaintiff demands judgment against defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) as follows:

- A.) Judgment awarding plaintiff compensatory damages;
- B.) Judgment awarding attorney’s fees and costs of suit; and
- C.) Judgment awarding such other further relief as the Court deems fair, just and equitable.

THIRD COUNT:
(Bad Faith in Contract)

1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein
2. Every contract contains within it a covenant of good faith and fair dealing for each party is, has a matter of law, not to intentionally take any actions that will in any way frustrate the purposes and goals of the contractual agreement.
3. In this case, the actions of defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) in total constitute actionable Bad Faith in Contract and the plaintiffs have been proximately damaged thereby.

WHEREFORE, plaintiff demands judgment against defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) as follows:

- A.) Judgment awarding plaintiffs compensatory damages;
- B.) Judgment awarding plaintiffs punitive damages;
- C.) Judgment awarding attorney’s fees and costs of suit; and
- D.) Judgment awarding such other further relief as the Court deems fair, just and equitable.

FOURTH COUNT:
(Tortious Interference With Contract)

1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein
2. There was a legally enforceable contractual agreement between plaintiffs and defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”).
3. Defendant Mark Massry, individually, and defendants Sam Cohen and Suzanne Cohen were each aware of the existence of the legally enforceable contractual agreement between plaintiffs and defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”).
4. Despite this knowledge, defendant Mark Massry, individually, and defendants Sam Cohen and Suzanne Cohen did each individually, and with each other did conspire, to intentionally, and maliciously, that is, with motive to harm and without justification, interfered with the contractual relation existing between the plaintiffs and defendant Larchwood Synagogue, Inc. (f/k/a “Larchwood Minyan, Inc.”) by signing and filing a fraudulent release with no notice to plaintiffs.
5. As to defendant Mark Massry, individually, New Jersey courts will impose personal liability on a director or officer of a corporation for the corporation’s torts or misdeeds

when he or she "... commits the tort or . . . directs the tortious act to be done, or participates or cooperates therein, . . . even though liability may also attach to the corporation for tort." *Van Natta Mech. Corp. v. Di Stauro*, 277 N.J. Super. 175, 191 (App. Div. 1994) (quoting *McGlynn v. Schultz*, 95 N.J. Super. 412, 416 (App. Div.), *certif. denied*, 50 N.J. 409 (1967)).

6. Known as the "tort participation theory", this requires the corporate officer to have sufficient involvement in the commission of the tort. *Saltiel v. GSI Consultants, Inc.*, 170 N.J. 297, 3030 (2002). Under the "tort participation theory, liability can attach even if the officer's acts were performed for the corporation's benefit and the officer did not personally benefit. *Id.*
7. Here, in addition to (1) the breach of contract and (2) bad faith in contract committed by Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc.") and by defendant Mark Massry in his official capacity as a Board Member of such defendant, defendant Mark Massry is also individually liable and not protected by the corporate veil for intentional interference with existing contractual relations. *See Robsac Industries, Inc. v. Chartpak*, 204 N.J. Super. 149, 156 (App. Div. 1985) (corporate officer personally charged with malicious interference with contract, fraudulent misrepresentation notwithstanding that liability also was also imposed on corporation).
8. Plaintiffs have been proximately damaged by the wrongful actions of the referenced defendants aforesaid.

WHEREFORE, plaintiff demands judgment against defendant Mark Massry, Sam Cohen and Suzanne Cohen, individually, as follows:

- A.) Judgment awarding plaintiffs compensatory damages;

- B.) Judgment awarding plaintiffs punitive damages;
- C.) Judgment awarding attorney's fees and costs of suit; and
- D.) Judgment awarding such other further relief as the Court deems fair, just and equitable.

FIFTH COUNT:
(Inadequate Notice)

1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein.
2. The NOTICE OF HEARING given by defendant Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc.") (**See "Exhibit E" attached hereto**) is and was legally inadequate and insufficient as such notice failed to provide information to the public about the prior existing agreement between plaintiffs and Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc.") that could affect the application. The inadequate notice was not inadvertent but rather was by conscious design and plan to mislead the public.
3. The failure of Larchwood Synagogue, Inc. (f/k/a "Larchwood Minyan, Inc.") to provide adequate notice consistent with the requirements of the state of New Jersey Municipal Land Use Law renders the two September 15, 2022 Resolutions adopted by the Ocean Township Zoning Board of Adjustment null and void.

WHEREFORE, plaintiff demands judgment against defendant Ocean Township Zoning Board of Adjustment as follows:

- A.) Judgment declaring that the September 15, 2022 Resolution of defendant Ocean Township Zoning Board of Adjustment entitled "Resolution of the Zoning Board of Adjustment of the Township of Ocean – Approval of Conditional Use, Amending Prior Approval

Conditions and Associated Bulk Variances” is invalid and is therefore set aside and shall have no legal effect whatsoever;

- B.) Judgment declaring that the September 15, 2022 Resolution of defendant Ocean Township Zoning Board of Adjustment entitled “Resolution of the Zoning Board of Adjustment of the Township of Ocean – Preliminary and Final Site Plan Approval” is invalid and is therefore set aside and shall have no legal effect whatsoever;
- C.) Judgment awarding such other further relief as the Court deems fair, just and equitable.

SIXTH COUNT:
(Arbitrary, Capricious and Unreasonable)

1. Plaintiff repeats and re-alleges all of the prior allegations of this pleading as is same are set forth again fully at length herein.
2. The factual findings by defendant Ocean Township Zoning Board of Adjustment in the two (2) separate September 15, 2022 Resolutions were and are not supported by substantial evidence in the record before them and therefore such conclusions and requests granted in such Resolutions were and are arbitrary, capricious and unreasonable and therefore void and invalid and must be set aside.

WHEREFORE, plaintiff demands judgment against defendant Ocean Township Zoning Board of Adjustment as follows:

- A.) Judgment declaring that the September 15, 2022 Resolution of defendant Ocean Township Zoning Board of Adjustment entitled “Resolution of the Zoning Board of Adjustment of the Township of Ocean – Approval of Conditional Use, Amending Prior Approval Conditions and Associated Bulk Variances” is invalid and is therefore set aside and shall have no legal effect whatsoever;

- B.)** Judgment declaring that the September 15, 2022 Resolution of defendant Ocean Township Zoning Board of Adjustment entitled “Resolution of the Zoning Board of Adjustment of the Township of Ocean – Preliminary and Final Site Plan Approval” is invalid and is therefore set aside and shall have no legal effect whatsoever;
- C.)** Judgment awarding such other further relief as the Court deems fair, just and equitable.

DATED: October 31, 2022



R. S. GASIOROWSKI, ESQ.
Attorney for Plaintiffs
Steven Allen Hedaya and Emilie Hedaya

COMBINED R. 4:5-1(b)(2), R. 1:38-7(b) & R. 4:69-4 CERTIFICATIONS:

R. S. GASIOROWSKI, ESQ. hereby certifies as follows:

1. I am the attorney for plaintiffs in this matter and as such I am fully familiar with all facts relevant to this case.
2. Pursuant to R. 4:5-1, I hereby certify that I know of no other actions or arbitration involving this same set of facts, and that none are contemplated except the following:
 - * **Celler v. Ocean Township Zoning Board of Adjustment, being filed in the Superior Court of New Jersey, Law Division, Civil Part, Monmouth County, no docket number known yet.**
3. I know of no other parties that should be joined in this action except the following:

NONE
4. I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with R. 1:38-7(b).
5. I certify pursuant to R. 4:69-4 that all necessary transcripts of local agency proceedings in the cause have been ordered.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

DATED: October 31, 2022

R. S. GASIOROWSKI, ESQ.

To view the exhibits referenced in the Amended Complaint or for more information, please go to

<https://portal.njcourts.gov/webcivilj/CIVILCaseJacketWeb/pages/civilCaseSearch.faces>