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BARBARA SHERIDAN, Plaintiff, vs. EGG HARBOR TOWNSHIP BOARD OF EDUCATION; TERRI CHASE and JOHN DOES 1-5 AND 6-10, Defendants.	:	SUPERIOR COURT OF NEW JERSEY ATLANTIC COUNTY - LAW DIV. Civil Action DOCKET NO. L-5966-12 **COMPLAINT AND JURY DEMAND**

Plaintiff Barbara Sheridan, residing in Egg Harbor Township, New Jersey, by way of complaint against the defendants, says:

Preliminary Statement

This matter arises under the New Jersey Law Against Discrimination's ("LAD") prohibition against discrimination and harassment on the basis of disability or perception of disability.

Identification of Parties

1. Plaintiff Barbara Sheridan is, at all relevant times herein, a resident of the State of New Jersey and was an employee of defendants.

2. Defendant Egg Harbor Township Board of Education is a New Jersey municipal entity organized to administrate the schools and subject to the assertion of jurisdiction by and in this Court and is a place of public accommodation as defined by the LAD.

3. Terri Chase is, at all relevant times herein, plaintiff's supervisor and the lead custodian, and is liable under the LAD as an aider and abettor of the discrimination perpetrated upon the plaintiff.

3. Defendants John Does 1-5 and 6-10, currently unidentified, are individuals and/or entities who, on the basis of their direct acts or on the basis of *respondeat superior*, are answerable to the plaintiff for the acts set forth herein.

General Allegations

4. Plaintiff was employed by defendant, Egg Harbor Township School District, as a custodian from March of 2004 until approximately April 2012.

5. At all relevant times herein, plaintiff was performing the essential functions of her job duties up to the legitimate expectations of her employer.

6. In or about August or September of 2011, plaintiff, Terri Chase and Larry McGinty, a co-worker, were gathered in a common area, eating breakfast sandwiches when Ms. Chase turned to the plaintiff and stated, "Oh, do you know how fattening that is? Maybe you don't care about your weight, but I care about mine."

7. Ms. Chase then proceeded to continue talking about her weight for an extensive period of time.

8. Thereafter, sometime in early September, 2011, the plaintiff was performing her job duties and was positioned on a six foot aluminum ladder.

9. Ms. Chase, seeing the plaintiff on the ladder, told the plaintiff, "Get off the ladder, you are going to break it," embarrassing and humiliating the plaintiff.

10. Further, on at least four occasions since August of 2011, Ms. Chase has commented to the plaintiff that "You need to lose weight."

11. On one particular occasion, Ms. Chase referenced a relative of hers who was overweight, had large legs with vascular problems and had passed away as a result. In telling the plaintiff the story, Ms. Chase commented that "You need to lose weight."

12. On another occasion, a fellow custodian, Dolores McFadden approached the plaintiff and told her that Ms. Chase had come up to her and said, "Barb's gained some weight since she's been with her boyfriend."

13. On or about January 31, 2012, the plaintiff was handed a letter, in Ms. Chase's office, by Mike March, plaintiff's supervisor.

14. The letter was signed by Joetta Surace, the director of human resources for Egg Harbor Township Schools, and stated that there were numerous concerns about plaintiff's ability to perform her job.

15. The letter also stated that the superintendent, Dr. Scott McCartney, directed that she undergo an independent fitness for duty examination by the district's medical officer. The letter falsely stated that plaintiff had medical issues such as fainting, dizzy spells and shortness of breath, none of which were medical issues concerning the plaintiff or experienced by plaintiff.

16. The day after the plaintiff received this letter, she approached the school principal, James Battersby.

17. Plaintiff informed Mr. Battersby about the letter and Mr. Battersby indicated that he was in shock and that this request did not come from him.

18. Mr. Battersby further informed the plaintiff that he had never had any complaints about her work.

19. Mr. Battersby then left his office and proceeded directly to the union representative, Tom Spangler, and had Mr. Spangler speak with the plaintiff while Mr. Battersby watched Mr. Spangler's class.

20. The plaintiff informed Mr. Spangler of what had occurred and, Mr. Spangler, in turn, contacted Kathy Wazner, the union president.

21. Ms. Wazner, upon information and belief, contacted a gentleman by the name of "Myron," from Trenton.

22. Plaintiff was advised that she would not have to execute HIPAA authorizations, but would have to attend the examination.

23. Despite the fact that, apparently, Ms. Chase did not believe plaintiff could perform her duties, on February 17, during a teachers' "in-service" day, Ms. Chase left the plaintiff alone to run the school, without any instructions.

24. On February 29, 2012, the plaintiff went to the AtlantiCare office, which she was directed to, after completing seven hour's work.

25. The examining doctor asked her why she was there and he advised that he had a list of concerns which were provided to him and which the plaintiff had not seen before.

26. When speaking with the doctor, he commented that, in essence, she would need to "prove her innocence" regarding her fitness for the position.

27. The doctor thereafter ordered a functional capacity evaluation.

28. The doctor placed the plaintiff on light duty, due to the allegations that she could not perform her job.

29. The following day, March 1, 2012, the plaintiff reported to work as usual when she was approached by Mr. March, who asked her to come with him.

30. Thereafter, the plaintiff was seated in a room with Mr. March and Mr. Spangler. At that time, Mr. March advised, "Your test results came back and I'm going to have to ask you to leave."

31. Mr. March made no mention of light duty and only stated that the plaintiff was going to have to leave.

32. Thereafter, Mr. March left the room and the plaintiff and Mr. Spangler proceeded to speak with Principal Battersby.

33. The plaintiff then asked the principal, "Jim, have I not always done everything you've asked me to do?"

34. Mr. Battersby responded, "Yes, you're a good employee."

35. The plaintiff then proceeded to question what was happening and Mr. Battersby stated, "The school is just trying to protect themselves."

36. Mr. Spangler then stated, "I need to protect myself. I believe Barb needs legal representation."

37. Mr. Battersby then said, "Maybe she (Ms. Chase) feels you're doing your job but just struggling to do it."

38. On March 8, 2012, plaintiff reported to Betty Bacharach, in Pomona, for her functional capacity exam.

39. The first part of the exam required the plaintiff to fill out paperwork, and respond to 126 questions on a computer, regarding her capabilities.

40. As she continued to take the test, she became very upset and angered.

41. While taking the exam, a doctor had put a heart monitor on her and her blood pressure was taken.

42. The plaintiff told the doctor that she was very upset and stressed regarding these issues and that her blood pressure was normally not high.

43. In requiring the plaintiff to undergo a fitness for duty exam, defendants have violated their own Policy, which requires that plaintiff be provided with the reasons for the exam as well as the opportunity to appear before the board to explain or refute those reasons.

44. Plaintiff was never given such an opportunity.

45. When the plaintiff inquired to Ms. Surace regarding the reasons for her exam, plaintiff was provided with a list of "concerns", which was actually dated three days *after* the letter requesting plaintiff have the exam performed.

46. Additionally, *none* of the concerns listed are factually accurate.

47. On or about April 4, 2012, Ms. Surace informed the plaintiff that she was found unfit for duty.

48. Ms. Surace also informed the plaintiff that the school received a report back from the physical therapist that the plaintiff did not meet the requirements of a custodian.

49. Ms. Surace then informed the plaintiff that the findings would be brought before the board on April 24, 2012, that plaintiff would be terminated at that time.

50. After this, Ms. Surace said, "Have a good weekend and enjoy your Easter."

51. Additionally, Dr. Magarello, the doctor who, upon information and belief, examined the plaintiff, phoned the plaintiff on April 5, 2012 and informed her that she was not fit for duty because she didn't lift the required amount of pounds and that she didn't perform the tasks long enough.

52. At no time was the plaintiff ever informed how long she needed to perform the test or how many pounds she needed to lift.

53. In fact, during the physical portion of the exam, the doctor repeatedly encouraged the plaintiff to stop performing the test if she felt the need to.

54. The comments and conduct of defendant Egg Harbor Township Schools, by and through its employees, constitutes actionable harassment because of plaintiff's disability and/or because of defendants' perception regarding plaintiff's disability, to wit, her weight.

55. All harassment, as alleged above, is severe and/or pervasive.

56. The harassment which occurred resulted in a hostile and/or intimidating and/or abusive working environment.

57. A reasonable person in the same or similar circumstances as the plaintiff would have reasonably believed the working environment to have altered, to have become hostile and/or intimidating and/or abusive.

58. Defendants are liable for the harassment because they were negligent in failing to promulgate a policy prohibiting and/or deterring the harassment.

59. Defendants are liable, additionally, because they delegated authority to Ms. Chase, plaintiff's supervisor, who abused that delegated authority in order to commit the harassment.

60. Additionally, the comments and conduct of defendants above constitutes disparate treatment, which was "determined in part" or "motivated in part" because of plaintiff's disability and/or perceived disability, to wit, plaintiff's weight.

61. The disparate treatment to which plaintiff endured, resulted in plaintiff's eventual termination.

62. Any other reason offered by the defense to explain plaintiff's termination is pretext.

63. Additionally, because the discrimination and harassment was participated in by a member of "upper management," the lead custodian and supervisor of custodians, punitive damages are appropriate.

64. Additionally, Terri Chase is individually liable as a person who aided and abetted by providing knowing and purposeful assistance to defendants in discriminating and/or harassing plaintiff.

COUNT I

Harassment Based Upon Disability and/or Perception of Disability

65. Plaintiff hereby repeats and realleges paragraphs 1 through 64 as though fully set forth herein.

66. Plaintiff was harassed in violation of the LAD for the reasons set forth above, and it is the responsibility of the defendants in compensatory and punitive damages, for the reasons set forth above.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COUNT II

Individual Liability of Terri Chase

67. Plaintiff hereby repeats and realleges paragraphs 1 through 66 as though fully set forth herein.

68. Defendant Chase is individually liable as an aider and abettor of the discrimination perpetrated against the plaintiff.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COUNT III

Disparate Treatment Under the Law Against Discrimination/Discriminatory Discharge

69. Plaintiff hereby repeats and realleges paragraphs 1 through 68 as though fully set forth herein.

70. Plaintiff was intentionally discriminated against by defendants in effectuating plaintiff's discriminatory treatment and discharge based upon plaintiff's disability and/or based upon defendants' perception of plaintiff's disability, to wit, obesity.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COUNT IV

Request for Equitable Relief

71. Plaintiff hereby repeats and realleges paragraphs 1 through 70 as though fully set forth herein.

72. Plaintiff requests the following equitable remedies and relief in this matter.

73. Plaintiff requests a declaration by this Court that the practices contested herein violate the New Jersey Law Against Discrimination.

74. Plaintiff requests that this Court order the defendant to cease and desist all conduct inconsistent with the LAD going forward, both as to this specific plaintiff and as to all other individuals similarly situated.

75. To the extent that plaintiff was separated from employment and to the extent that the separation is contested herein, plaintiff requests equitable reinstatement, with equitable back pay and front pay.

76. Plaintiff requests, that in the event that equitable reinstatement and/or equitable back pay and equitable front pay is ordered to the plaintiff, that all lost wages, benefits, fringe benefits and other remuneration is also equitably restored to the plaintiff.

77. Plaintiff requests that the Court equitably order the defendant to pay costs and attorneys' fees along with statutory and required enhancements to said attorneys' fees.

78. Plaintiff requests that the Court order the defendants to alter its files so as to expunge any reference to which the Court finds violates the statutes implicated herein.

79. Plaintiff requests that the Court do such other equity as is reasonable, appropriate and just.

WHEREFORE, plaintiff demands judgment against the defendants jointly, severally and in the alternative, together with compensatory damages, punitive damages, interest, costs, attorneys' fees, enhanced attorneys' fees, and any other relief the Court deems equitable and just.

COSTELLO & MAINS, P.C.

Dated: 8/27/12

By: _____
Kevin M. Costello

DEMAND TO PRESERVE EVIDENCE

1. All defendants are hereby directed and demanded to preserve all physical and electronic information pertaining in any way to plaintiff's employment, to plaintiff's cause of action and/or prayers for relief, to any defenses to same, and pertaining to any party, including, but not limited to, electronic data storage, closed circuit TV footages, digital images, computer images, cache memory, searchable data, emails, spread sheets, employment files, memos, text messages and any and all online social or work related websites, entries on social networking sites (including, but not limited to, Facebook, twitter, MySpace, etc.), and any other information and/or data and/or things and/or documents which may be relevant to any claim or defense in this litigation.

2. Failure to do so will result in separate claims for spoliation of evidence and/or for appropriate adverse inferences.

COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

JURY DEMAND

Plaintiff hereby demands a trial by jury.

COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

RULE 4:5-1 CERTIFICATION

1. I am licensed to practice law in New Jersey and am responsible for the captioned matter.

2. I am aware of no other matter currently filed or pending in any court in any jurisdiction which may affect the parties or matters described herein.

COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

DESIGNATION OF TRIAL COUNSEL

Kevin M. Costello, Esquire, of the law firm of Costello & Mains, P.C., is hereby-designated trial counsel.

COSTELLO & MAINS, P.C.

By: _____
Kevin M. Costello

In the Superior Court of New Jersey
Appellate Division

Docket _____

BARBARA SHERIDAN Plaintiff, **Vs.** EGG HARBOR TOWNSHIP BOARD OF EDUCATION; TERRI CHASE AND JOHN DOES 1-5 AND 6-10, Defendants.	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION On Appeal From: LAW DIVISION ATLANTIC COUNTY DOCKET NO.: ATL-L-5966-12 Sat Below: Hon. Allen J. Littlefield, J.S.C.

BRIEF AND APPENDIX IN SUPPORT OF PETITION FOR INTERLOCUTORY APPEAL OF COURT'S REFUSAL TO CONSIDER DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

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I. PRELIMINARY STATEMENT

Defendant files the instant Motion for Leave to Appeal from the Trial Court's refusal to consider Defendant's Motion for Summary Judgment. Discovery in this matter concluded on March 3, 2014 and a trial notice was automatically generated on March 5, 2014, scheduling trial for May 12, 2014. Upon the completion of discovery, Defendant prepared a Motion for Summary Judgment and filed it with the Court on March 27, 2014. The Trial Court refused to consider the Motion, because the Motion did not comply with the strict timing parameters established by New Jersey Court Rule 4:46-1, which requires all Summary Judgment Motions to be returnable more than 30 days prior to the scheduled trial date. The Trial Court did not enter an Order denying Defendant's Motion for Summary Judgment on procedural grounds and did not permit the Defendant an opportunity to demonstrate the good faith basis for filing the Motion outside the time frame established by Court Rule 4:46-1. Defendant will be severely prejudiced in the defense of this litigation and forced to endure unnecessary expenses in preparation for trial if the Court refuses to consider the Motion for Summary Judgment.

Defendant respectfully requests that this Court enter an Order compelling the Trial Court to consider Defendant's Motion for Summary Judgment.

II. PROCEDURAL HISTORY

1. Plaintiff filed the instant litigation on August 27, 2012, alleging that she was terminated from her position of custodian with the Board of Education due to her weight and in violation of the New Jersey Law Against Discrimination. In addition, Plaintiff alleges a hostile work environment in violation of the NJLAD. (See Da001-Da012)
2. Since the Complaint is one premised upon the NJLAD, the Court provided 450 days to complete discovery, with the Discovery End Date set for March 3, 2014.
3. None of the parties have ever sought a discovery extension.
4. Discovery took place in this matter up until the discovery end date. On February 20, 2014, Plaintiff took the deposition of two BOE employees, Tom Spangler and Brian Dunleavy. Mr. Spangler was one of the union representatives that plaintiff contacted during her employment. Mr. Dunleavy is a former supervisor of the Plaintiff. Those deposition transcripts were not received until approximately March 11, 2014
5. On March 5, 2014 the Court generated a trial notice for May 12, 2014. That trial notice was received by Defendant BOE on Monday, March 10, 2014. (See Da013)
6. Immediately thereafter, Defense counsel began preparing a Motion for Summary Judgment. Due to the complexity of the case and

voluminous deposition transcripts (some of which were not received by counsel until Tuesday, March 11, 2014) Defendant was unable to file the Motion for Summary Judgment by Friday, March 14, 2014 to make the April 11, 2014 return date.

7. Therefore, Defendant BOE prepared and filed the motion for summary judgment for the next possible return date, April 25, 2014. (See Da014-Da015)

8. Plaintiff objected to the motion for summary judgment as being untimely (along with Co-Defendant's motion for summary judgment as well). (See Da016-Da017)

9. The Trial Court did not entertain the Motion for Summary Judgment, which was assigned to be heard on April 25, 2014.

10. The Trial Court did not enter an Order denying the Motion on procedural grounds and did not permit the Defendant an opportunity to demonstrate their good faith basis for filing the Motion for Summary Judgment outside the time limits established by New Jersey Court Rule 4:46-1.

11. Defendant now appeals the Trial Court's refusal to entertain the Defendant's Motion for Summary Judgment.

12. In addition, due to the fact that the Trial Court did not enter a respective Order denying Defendant's Motion for Summary Judgment, Defendant also has filed Leave to Proceed with the Appeal without a Written Order.

III. LEGAL ARGUMENT

Pursuant to New Jersey Court Rule 2:5-6, Defendant appeals the Trial Court's Interlocutory Order refusing to entertain Defendant's Motion for Summary Judgment. Rule 2:5-6 requires that a motion for leave to take an interlocutory appeal be filed no more than 20 days after the date of service of the order from which relief is sought.

Here, as previously discussed, the Court did not enter an Order from which Defendant seeks relief. The Court, instead, simply refused to entertain or make any decisions on the Defendant's Motion for Summary Judgment. As such, Defendant is appealing the Court's failure to entertain the Motion for Summary Judgment, which was assigned to be heard on April 25, 2014. Defendant has filed a Motion for Leave to Proceed without a Written Order, as no such Order exists.

POINT 1: Defendant Was Denied the Ability to File for Summary Judgment

The New Jersey Supreme Court and Appellate Courts have made abundantly clear that "summary judgment is an important tool for disposing of non-meritorious lawsuits." Costello v. Ocean Cnty. Observer, 136 N.J. 594, 605 (1994); see also Feggans v. Billington, 291 N.J. Super. 382, 395, 677 A.2d 771 (App. Div. 1996). Absent the ability to file for Summary Judgment, a defendant is forced to incur unnecessary costs associated with trial preparation and is severely prejudiced in the defense of a litigation Procedurally, a Motion for Summary Judgment may be filed as early as twenty days from the

service of the Complaint. See Rule 4:6-1. The Appellate Division and New Jersey Supreme Court, however, have held that, in general, "summary judgment is inappropriate prior to the completion of discovery." See Willington v. Estate of Wellington, 359 N.J. Super. 484 (App. Div.) certif. denied 177 N.J. 493 (2003). The reasoning is that Courts "seek to afford every litigant who has a bona fide cause of action or defense the opportunity for full exposure of his case." United Rental Equip. Co. v. Aetna Life and Casualty Ins. Co., 74 *N.J.* 92, 99 (1977) (citing Robbins v. Jersey City, 23 *N.J.* 229, 240-41 (1957)). "When 'critical facts are peculiarly within the moving party's knowledge,' it is especially inappropriate to grant summary judgment when discovery is incomplete." Velantzas v. Colgate-Palmolive Co., 109 N.J. 189, 193 (N.J. 1988) (citing Martin v. Educational Testing Serv., Inc., 179 N.J. Super. 317, 326 (Ch.Div.1981)).

Following the completion of discovery, when the record is complete, parties are free to file dispositive summary judgment applications before the Court. Procedurally, the Court rules establish that a Motion for Summary Judgment shall be returnable before the Court more than 30 days prior to the scheduled trial date. R. 4:46-1 provides in pertinent part:

> All motions for summary judgment shall be returnable no later than30 days before the scheduled trial date, **unless the court otherwiseorders for good cause shown** . . . .

(emphasis added). As the rule clearly states, a showing of good cause permits the trial Court to hear Summary Judgment application filed outside the strict timeframes imposed by the Court Rules. The term "good cause shown" is flexible and its meaning is not fixed and definite. See Lietner v. Toms River Regional Sch., 392 N.J. Super. 80 (App. Div. 2007) (citing Tholander v. Tholander, 34 N.J. Super. 150 (Ch. Div. 1955). Moreover, pursuant to R. 1:1-2, any rule may be relaxed or dispensed with by the court in which the action is pending if adherence to it would result in an injustice.

In a nearly factually identical case, the trial court in Lee found that the Defendant established "good cause" for the untimely filing of their Summary Judgment application, the Appellate Division affirmed. " Lee v. State of New Jersey, 2009 N.J. Super. Unpub. LEXIS 166 1(App. Div. 2009)(See Da018-Da024). In Lee, following the completion of discovery, on August 15, 2008, a trial notice was sent out to all parties scheduling trial for October 27, 2008. Defendants thereafter filed their summary judgment motion on September 2, 2008, returnable October 10, 2008. The Court granted the motion for summary judgment. Plaintiff, however, argued that the motion should have been denied on procedural grounds since the motion was returnable less than thirty days from the trial date. The trial court found good cause to justify the relaxation of the thirty day rule since there was not enough lead time for the filing of the motion from the date the trial

notice was received to make it returnable thirty days prior to the trial date. Id. at *7. The Court also relied upon the Comment to R. 4:46-1 which provides that "[t]he purpose of the thirty-day interval is to accommodate the completion of the summary judgment motion process before the parties have to prepare for trial should the motion prove to be unsuccessful. Id. at*8

Here, in the instant, Defendant was procedurally prohibited from timely filing for Summary Judgment, due to the timing of the Court's automatic trial notice system. This litigation is premised upon an alleged violation of the New Jersey Law Against Discrimination. As such, the case was assigned a 450 day discovery track. The discovery end date was scheduled for March 3, 2014. Due to the fact sensitive nature of the case, Summary Judgment application would have been inappropriate during the discovery phase of the case.

Both parties worked diligently throughout the discovery process to complete written discovery and take all necessary fact witness depositions. The parties were able to complete the extensive discovery prior to the expiration of the discovery period and did not require a discovery extension. The parties did, however, conduct discovery depositions up until the last possible date, receiving some deposition transcripts on March 11, 2014.

On March 5, 2014 the Court automatically generated a trial notice, scheduling the case for trial on May 12, 2014. The trial notice was received by defense counsel on March 10, 2014. Once all

deposition transcripts were received on March 11, 2014, defense counsel diligently prepared the Motion for Summary Judgment. Due to the complex nature of the case and extensive discovery, however, Defendant (and Co-Defendant) were unable to prepare an appropriate Motion for Summary Judgment in three days and have it filed with the Court by March 14, 2014 to make the April 11, 2014 return date. Therefore, Defendant Board of Education prepared and filed the motion for summary judgment for the next possible return date, April 25, 2014.

Plaintiff objected to the Defendant's Motion for Summary Judgment, arguing that the Motion was not timely filed in accordance with New Jersey Court Rule 4:46-1. The Court did not entertain the Motion for Summary Judgment and did not permit the Defendant to demonstrate the good cause basis for filing outside the strict timing diameters established by Rule 4:46-1. The Court did not provide any Order denying the Motion or place any reasoning on the record for refusing to hear the Motion. Instead, Defendant simply received a telephone call and confirming letter from Plaintiff's counsel indicating that the Court had refused to hear the Motion for Summary Judgment.

Defendant was denied an appropriate time period at the conclusion of discovery to review the record and prepare a Motion for Summary Judgment. The parties worked diligently throughout the discovery process in an effort to avoid seeking a discovery extension and

therefore conducted discovery until the expiration of the discovery process. If the Defendant, a public entity, is prohibited from having the Court hear the instant Motion for Summary Judgment, the Defendant will be forced to incur unnecessary expenses associated with trial preparation and will be severely prejudiced. Defendant respectfully requests that this Court enter an Order compelling the Trial Court to consider Defendant's Motion for Summary Judgment.

POINT 2: Plaintiff Will Not Be Prejudiced Should the Court Entertain Defendant's Motion for Summary Judgment

Plaintiff contends that defendants' motion for summary judgment was untimely under Rule 4:46-1 because the motion was filed less than thirty days before the first scheduled trial date. Should this Court enter an Order compelling the Trial Court to consider Defendant's Motion for Summary Judgment, Plaintiff cannot argue that she will be prejudiced by the Court's decision. See Conrad v. Catapano, 2013 N.J. Super. Unpub. LEXIS 427 (App.Div. Feb. 26, 2013) (Court rejected procedural argument and found Plaintiff did not suffer prejudice if trial court heard untimely Motion for Summary Judgment, because "those same substantive arguments could have been advanced by defendants at or after the trial")(See Da025-Da030).

IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Court enter an Order compelling the Trial Court to consider Defendant's Motion for Summary Judgment.

Respectfully submitted,

MARSHALL, DENNEHEY, WARNER,
COLEMAN & GOGGIN

By: _____
RICHARD L. GOLDSTEIN, ESQUIRE
Attorney for Defendant,
Egg Harbor Township Board of
Education

DATED: May 6, 2014

#01029-00120-RLG

FILED

MAY 8 2014

A. J. Littlefield, J.S.C.

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BARBARA SHERIDAN Plaintiff, **Vs.** EGG HARBOR TOWNSHIP BOARD OF EDUCATION; TERRI CHASE AND JOHN DOES 1-5 AND 6-10, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION ATLANTIC COUNTY DOCKET NO.: ATL-L-5966-12 **CIVIL ACTION** ***ORDER***

THIS MATTER having been brought before the Court by Richard L. Goldstein, Esq. and Matthew J. Behr, Esq., of the law firm of Marshall, Dennehey, Warner, Coleman & Goggin, on behalf of Defendant, Egg Harbor Township Board of Education, on a Motion for Reconsideration, and for good cause shown;

IT IS on this 8th day of May, 2014,

ORDERED that:

1. Defendant(s), Egg Harbor Township Board of Education's, AND TERRI CHASE Motion for Reconsideration is hereby ***GRANTED***; and

2. Oral Argument will be heard on defendants, Egg Harbor Township Board of Education and Terri Chase's, Motions for Summary judgment, on June 6, 2014, at 1:30 p.m.;
3. Plaintiff's opposition of said motions are due on May 27, 2014;
4. Defendant's reply briefs are due on June 3, 2014;
5. Trial is hereby rescheduled to July 7, 2014;

6. The Motion to stay the proceedings pending leave to appeal is DENIED as MOOT.

7. 2. The court shall entertain and consider Defendant, (5) Egg Harbor Township Board of Education's, Motions (AND TERRI Chase's) for Summary Judgment;

J.S.C.

Allen J. Littlefield J.S.C

(X) Opposed
( ) Unopposed

06/3584633.v1

Oral Argument heard on May 8, 2014.
Reasons on the record.