



Cullen and Dykman LLP  
 Continental Plaza  
 433 Hackensack Avenue  
 Hackensack, NJ 07601  
 T: 201.488.1300  
 F: 201.488.6541

ANTHONY S. BOCCHI  
 PARTNER  
[abocchi@cullenllp.com](mailto:abocchi@cullenllp.com)

February 10, 2023

**Via JEDS**

Hon. Michael J. Blee, A.J.S.C.  
 Superior Court of New Jersey  
 Cape May County Courthouse  
 9 North Main Street  
 Cape May, New Jersey 08210

**RE: New Jersey Department of Environmental Protection v. City of North Wildwood, et al.**  
**Docket No. CPM-C-55-22**

Dear Judge Blee:

Our Firm represents Defendant City of North Wildwood (hereafter, “North Wildwood”) in the above-referenced matter. As Your Honor is aware, North Wildwood filed a letter and a proposed amended form of order pursuant to the 5-day Rule on February 7, 2023, respectfully requesting the Court to remove the term “Final Judgment” from Paragraph 4 of the Court’s February 1, 2023 Order (hereafter, the “February 1 Order”). On February 9, 2023, the New Jersey Department of Environmental Protection (hereafter, the “NJDEP”) filed a letter and a proposed form of amended order in opposition to North Wildwood’s previous submission. For the reasons more fully set forth herein, North Wildwood respectfully maintains that the February 1 Order is not a Final Judgment under R. 2:2-3(b), R. 4:67-5, or R. 4:42-2(a). Accordingly, North Wildwood respectfully requests the Court to enter the enclosed proposed form of amended order.

R. 2:2-3(b) provides, “Final Judgments of a court, for appeal purposes, are judgments that finally resolve all issues as to all parties . . . .”<sup>1</sup> The February 1 Order is not a final judgment under R. 2:2-3(b) because it does not “finally resolve all issues as to all parties.” The NJDEP even admits as much – the NJDEP’s February 9 Letter states, “. . . NWW’s counterclaim remains open for further adjudication. . . .” See NJDEP’s February 9 Letter at Paragraph 4. This reason alone means that the February 1 Order does not “finally resolve all issues as to all parties” and, therefore, the February 1 Order is not a Final Judgment under R. 2:2-3(b).

Further, the NJDEP argues that the Court rendered a Final Judgment pursuant to R. 4:67-5 on the return

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<sup>1</sup> The reference to R. 3:26-3(b) in North Wildwood’s previous submission was a typographical error which should have been a reference to R. 2:2-3(b).

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date of its Order to Show Cause and Verified Complaint. However, R. 4:67-5 is inapplicable to summary actions when a Counterclaim is involved. In this case, the use of the term “Final Judgment” as defined in R. 4:67-5 presupposes that all issues have been disposed of, which clearly is not true by virtue of North Wildwood’s outstanding Counterclaim.

Moreover, the NJDEP’s reliance on R. 4:42-2(a) is misplaced because the Court did not use its discretion to enter the February 1 Order pursuant to R. 4:42-2(a), nor did it make factual certifications as required by the Rule. See R. 4:42-2(a).

With respect to the NJDEP’s request for a deadline extension to propound written discovery, North Wildwood is constrained to oppose such a request. An extension of the deadline to propound written discovery will prejudice North Wildwood by creating undue delay in resolving the urgent issues raised in its Counterclaim.

Finally, North Wildwood is willing to participate in a case management conference to discuss the parties’ requests should Your Honor deem it appropriate.

We appreciate Your Honor’s consideration of foregoing.

Respectfully submitted,

**CULLEN AND DYKMAN LLP**

*/s/ Anthony S. Bocchi*

**ANTHONY S. BOCCHI**

ASB/rc

Encls.

cc: Kevin H. Terhune, D.A.G. (via JEDS)

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NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,

SUPERIOR COURT OF NEW JERSEY  
CAPE MAY COUNTY  
CHANCERY DIVISION

Plaintiff,

v.

DOCKET NO: CPM-C-55-22

CITY OF NORTH WILDWOOD, "XYZ  
CORPORATIONS" 1-10; and "JOHN AND/  
OR JANE DOES" 1-10,

Civil Action

Defendants.

**AMENDED**  
**ORDER**

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**THIS MATTER**, having been brought before the Court by way of an Order to Show Cause, Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief, and Defendants' Motion for leave to file a Counterclaim; and Kevin A. Terhune, Esq., and Dianna E. Shinn, Esq., of the Deputy Attorney General Office, having appeared on behalf of Plaintiff; and Anthony S. Bocchi, Esq., of the firm Cullen and Dykman LLP, having appeared on behalf of Defendants; and the Court having reviewed the papers submitted and having heard oral argument; and for the reasons more fully set forth on the record; and for good cause shown;

**IT IS on this \_\_\_ day of FEBRUARY 2023; ORDERED and ADJUDGED as follows:**

1. Plaintiff's Motion for Temporary Restraining Order and Injunctive Relief is GRANTED and Defendants are hereby enjoined from:
  - a. Installing a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP;
  - b. Engaging in any further excavation, placement or regrading of sand between 14<sup>th</sup> and 16<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP;
  - c. Engaging in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16<sup>th</sup> and 25<sup>th</sup> Avenues until it has received a permit authorizing the installation of same from the NJDEP.
2. Defendants' Motion for leave to file a Counterclaim is hereby GRANTED.

3. Defendants must file an Emergency Authorization application with the NJDEP WITHIN TEN (10) DAYS of the Court's Order entered on February 1, 2023, seeking to:
  - a. Allow Defendants to install a bulkhead between 15<sup>th</sup> and 16<sup>th</sup> Avenues;
  - b. Allow Defendants to engage in further excavation, placement, or regrading of sand between 14<sup>th</sup> and 16<sup>th</sup> Avenues
  - c. Allow Defendants to engage in any other oceanfront construction, reshaping of dunes and/or reconstruction of the access point at 16<sup>th</sup> and 25<sup>th</sup> Avenues.
4. This Amended Order shall be electronically filed via e-courts thereby ensuring prompt service upon all counsel of record.

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**MICHAEL J. BLEE, A.J.S.C**