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October 20, 2016

VIA LAWYERS SERVICE

Honorable Jamie S. Perri, J.S.C.  
Superior Court of New Jersey  
Law Division  
Monmouth County Court House  
71 Monument Park  
P.O. Box 1266  
Freehold, NJ 07728

**Re: Highview Homes, LLC v. Township of Hazlet, et al.  
v. The Church of the Holy Family  
Docket No. MON-L-4224-15  
Response to Holy Family's Motion to Dismiss  
Returnable: October 28, 2016**

Dear Judge Perri:

Your Honor has graciously granted leave to Hazlet Township to submit this letter brief in opposition to the joint motion of Holy Family and Highview Homes to dismiss the third party complaint of Hazlet Township against Holy Family.

Hazlet Township's position is that Holy Family is an indispensable party to this matter under the mandatory joinder requirements of R. 4:28-1(a)(2). Under subsection (i), "the disposition of the action . . . may . . . as a practical matter impair or impede" Holy Family's interest in the property. Under subsection (ii) the disposition may "leave any of the persons already parties [Hazlet Township] subject to a

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substantial risk of incurring double, multiple, or other inconsistent obligations . . . ."

Perhaps an analogy to simpler fact situation might make this point more clearly.

In this hypothetical situation, suppose that my fence intrudes on my neighbor's property. Suppose that my neighbor rents his house to a tenant. Further suppose that the tenant sues me to have my fence removed.

Certainly, the tenant has a property interest giving him standing to sue. The tenant's property rights are affected.

Certainly, the property owner has standing to sue, either individually or jointly with the tenant. My neighbor's property interest will be affected by the litigation.

In this example, only the tenant sues me. My neighbor had the right to sue, but did not.

I, however, have the right under the mandatory joinder rule, R. 4:28-1(a)(2), to join my neighbor as an additional party, whether my neighbor likes that or not. I have the right to protect myself against "double, multiple, or other inconsistent obligations" to prevent my neighboring property owner from later filing another lawsuit about my fence. I also have the right to join my neighbor so as to bind her to any settlement reached with her tenant.

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That is the situation that Hazlet Township faces here. Sure, Holy Family did not have to join in the lawsuit. It could have. It did not, just like my neighbor chose not to in the hypothetical above.

But Hazlet Township, just as I did in my hypothetical, has the right add the property owner, Holy Family, as a party under the mandatory joinder rule.

The Township has a right to add Holy Family to avoid "double, multiple, or other inconsistent obligations" in the event Holy Family decides to sue on its own at a later time. In the event that the Township is successful in this lawsuit, say on the issue of suitability, that decision must be binding upon Holy Family, not just on Highview Homes. The mandatory joinder rules are in place to avoid unnecessary, inconsistent, inefficient, successive litigation.

Likewise, if a settlement is reached with Highview Homes, that settlement must be binding on Holy Family, just as a settlement about my fence must bind my neighbor.

Holy Family is an indispensable party regardless of its actions. Maybe Holy Family acted in good faith; maybe it did not. Maybe Highview Homes acted in good faith; maybe it did not.

The actions of Holy Family and Highview Homes, just like the actions of my neighbor and her tenant in the hypothetical

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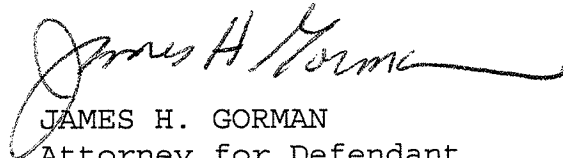
above, may be relevant to the disposition of the litigation. However, those actions are not relevant as to who must be a party to the underlying litigation.

Whether Holy Family or Highview Homes acted in good faith is an issue to be decided in the litigation, with all interested stakeholders being bound by the outcome.

Holy Family is an indispensable party under R. 4:28-1(a)(2) regardless as to how the court views the good faith obligations of Holy Family and Highview Homes. Findings as to suitability must bind all interested parties forever. Similarly, a settlement must bind all interested parties forever. That is the essence of *res judicata*.

For the foregoing reasons, Hazlet Township respectfully requests that this Court deny Holy Family's motion and find that Holy Family is an indispensable party pursuant to the mandatory joinder rule, R. 4:28-1(a)(2).

Respectfully submitted,



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Third Party Plaintiff  
Township of Hazlet

JHG/jo

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