

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

BERGEN ROCKLAND ERUV ASSOCIATION,  
YISROEL FRIEDMAN, S. MOSHE  
PINKASOVITS, SARAH BERGER, MOSES  
BERGER, CHAIM BREUER, YOSEF ROSEN,  
and TZVI SCHONFELD

Plaintiffs,

-against-

THE BOROUGH OF UPPER SADDLE RIVER  
Defendant.

**REPLY DECLARATION OF S. MOSHE PINKASOVITS IN FURTHER SUPPORT OF  
PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

I, S. Moshe Pinkasovits, hereby declare under penalty of perjury:

1. I am a plaintiff in the above-captioned proceeding. I previously submitted a declaration in this matter that details the role I played with respect to the expansion of an existing eruv into parts of the Borough of Upper Saddle River, New Jersey ("USR"). Declaration of S. Moshe Pinkasovits in Support of Plaintiffs' Application for a Preliminary Injunction, October 10, 2017.

2. I have reviewed Upper Saddle River's Memorandum of Law in Support of its Notice of Motion to Dismiss Plaintiffs' Amended Complaint Pursuant to Fed.R.Civ.P. (12)(b)(1) and in Opposition for Plaintiffs' Request for Injunctive Relief ("USR Brief") as well as the accompanying declarations of Thomas Dougherty ("Dougherty Decl."), Steven Forbes ("Forbes Decl."), Theodore Preusch ("Preusch Decl."), and Robert Hyman ("Hyman Decl.") (collectively, the "USR Declarations").

3. I respectfully submit this Reply Declaration to respond to certain of the statements made in the USR Brief and the USR Declarations. All of the facts set forth herein are based on my personal knowledge.

**June 15, 2017 Meeting with Mr. Forbes and Mr. Dougherty**

4. In both the Dougherty and Forbes Declarations, Mr. Dougherty and Mr. Forbes chronicle some of what was discussed at our June 15, 2017 meeting. While, in certain respects, we are in agreement as to what transpired at that meeting, there are inaccuracies in the Dougherty and Forbes Declarations that warrant clarification.

5. According to Mr. Dougherty, Rabbi Steinmetz and I made the claim at our June 15, 2017 meeting that “lechis were placed on poles as a directional sign, which communicated to the observer the direction and contour of the outer limits of the religious boundary line.” Dougherty Decl. ¶ 22. This is simply not true.

6. The primary reason for the June 15, 2017 meeting with Mr. Dougherty and Mr. Forbes was to explain the purpose of the eruv and to explain precisely what lechis are and what they are not. If anything, Mr. Dougherty has it backwards – as Rabbi Steinmetz and I explained at the June 15 meeting, lechis are absolutely not “directional signs” and no one who relies on an eruv would ever view them as such. To understand the contours of the Eruv, I, like everyone else in the community, rely on maps detailing what areas are inside and what areas are outside the eruv. I do not, and could not, rely on seeing lechis to know what area is covered by the eruv and what area is not.

7. In addition, Mr. Dougherty (as well as Mr. Forbes) claimed that Rabbi Steinmetz and I were told that the Vaad HaEruv could “proceed temporarily” while USR further considered whether the attachment of lechis to utility poles violated any ordinances or laws. Dougherty

Decl. ¶ 23; *see also* Forbes Decl. ¶ 11. This, too, is inaccurate. Mr. Dougherty and Mr. Forbes gave us the unqualified go ahead to begin our work. They only asked that we meet with the USR police to ensure that we are complying with any of their traffic safety requests. We did just that. Had we been given such “temporary” permission, we likely would not have moved forward with putting the lechis up at that time. Instead, we would have continued to work with USR until we had secured the unqualified go-ahead to put up the needed lechis. It would make no sense for us to go to the trouble and expense of putting up lechis if we thought there was a chance that USR would then turn around and tell us we had to take them down.

8. Although notably unaddressed in the Dougherty Declaration, the Forbes Declaration makes the additional claim that, at the June 15 meeting, Mr. Forbes told Rabbi Steinmetz and me that lechis “would likely be considered a device.” Forbes Decl. ¶ 10.<sup>1</sup> This, too, is not correct. What Mr. Forbes told us was that he was still studying the lechis and researching whether they might be considered a “device.” As noted above, the primary purpose of the June 15 meeting was to explain that lechis are not “signs” or “devices” and that they are not analogous in any way to things like political signs, garage sale signs, or lost animal signs. Indeed, after Rabbi Steinmetz and I explained the purpose of the eruv and what lechis are, we were given no indication by either Mr. Dougherty or Mr. Forbes that there was any reason to believe that USR had any remaining concerns with the attachment of lechis to utility poles within the borough. Had we been told that lechis “would likely be considered a device,” we would not

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<sup>1</sup> In its brief, USR cites to the same paragraph of the Forbes Declaration in support of another claim – that Rabbi Steinmetz and I told Mr. Forbes that the lechis are “religious signals to believers.” USR Brief at 26. We never made such a statement. In fact, the statement in USR’s brief is not even supported by the Forbes Declaration that it cites. Mr. Forbes, in his declaration, never claimed that we made such a statement.

have moved forward with the attachment of the lechis to the utility poles and incurred the expense of thousands of dollars.

### **Need to Expand the Eruv into USR**

9. In its brief, USR also contends that Plaintiffs' claims must fail as they do not "allege that they cannot build an *eruv* . . . in Rockland County . . . that would adequately address their concerns." USR Brief at 43. This argument is based on an inaccurate premise. We made every effort to expand the eruv so that it covered all of the members of the Jewish Community that wish to be within an eruv, while still keeping the eruv entirely within the boundaries of Rockland County. However, that proved to be unfeasible. There simply was no practical way to enclose the needed area without crossing the border into USR. And while we had no feasible alternative but to include small portions of USR (as well as Montvale and Mahwah) to complete the eruv expansion, we took great efforts to make sure that we were staying as close to the New York border as we could.

10. Relatedly, USR also contends that "the *eruv* [we] seek extends to several municipalities and permission in USR will not achieve what [we] seek: an expansive *eruv* across several communities . . . . Without the other portions of the two *eruvim*, the USR portions are incomplete and thereby defective." USR Brief at 46-47. This is factually inaccurate. By just attaching lechis to utility poles in USR, and even if we do nothing in either Mahwah or Montvale, we will still be able to expand the eruv and cover many members of the observant Jewish community living along the New York–New Jersey border. While the entirety of the eruv expansion project will not be completed without completing the expansion into portions of Montvale and Mahwah, by just attaching lechis to utility poles in USR, many more families will be able to more fully and freely practice their religion on the Sabbath and Yom Kippur.

Executed on November 30, 2017

  
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**S. MOSHE PINKASOVITS**