



State of New Jersey

OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
DIVISION OF LAW
25 MARKET STREET
PO Box 093
TRENTON, NJ 08625-0093

PAULA T. DOW
Attorney General

CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

ROBERT M. HANNA
Director

March 1, 2010

VIA HAND-DELIVERY

Appellate Division Clerk's Office
Hughes Justice Complex
25 Market Street,
Trenton, NJ 08625-00006

Re: State of New Jersey v. Thomas Cullen, et al.
Appeal from Final Judgment
Docket No.: MER-L-559-06

Dear Sir/Madam:

Enclosed is the original and one copy of:

- 1) Notice of Appeal;
- 2) Civil Case Information Statement; and
- 3) January 14, 2010 Order of the Honorable Andrew Smithson.

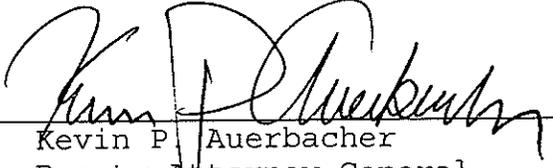
Please note the fact of filing on the extra copies and return same to our messenger. Transcripts will be submitted at a later date.



Thank you for your courtesies.

Sincerely yours,

PAULA T. DOW
ATTORNEY GENERAL OF NEW JERSEY

By: 
Kevin P. Auerbacher
Deputy Attorney General

KPA/bjz
Encl.

c: Honorable Andrew J. Smithson, J.S.C. (via regular mail)
Jeffrey Smith, Esq. (via electronic mail and overnight mail)
Michael O. Hill, Esq. (via electronic mail and overnight mail)
Peter R. Ginsberg, Esq. (via electronic mail and overnight
mail)
Bennett Mohin, Pro Se (via overnight mail)



New Jersey Judiciary

Superior Court - Appellate Division

NOTICE OF APPEAL

Type or clearly print all information. Attach additional sheets if necessary.	ATTORNEY/LAW FIRM/PRO SE LITIGANT			
TITLE IN FULL (AS CAPTIONED BELOW):	NAME Kevin P. Auerbacher, DAG			
STATE OF NEW JERSEY, DEPARTMENT OF ENVIRONMENTAL PROTECTION v. THOMAS CULLEN, et al.	STREET ADDRESS 25 Market Street, P.O. Box 093			
	CITY Trenton	STATE NJ	ZIP 08625-0093	PHONE NUMBER 609-292-6945
	EMAIL ADDRESS kevin.auerbacher@dol.lps.state.nj.us			

ON APPEAL FROM SUMMARY JUDGMENT ORDER AND ORDER FOR DISMISSAL

TRIAL COURT JUDGE Hon. Andrew J. Smithson, J.S.C.	TRIAL COURT OR STATE AGENCY Mercer County Superior Court	TRIAL COURT OR AGENCY NUMBER MER-L-559-05
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Notice is hereby given that Plaintiff appeals to the Appellate Division, from a Judgment or Order Entered on January 14, 2010 in the Civil Criminal or Family Part of the Superior Court.

If not appealing the entire judgement, order or agency decision, specify what parts or paragraphs are being appealed.

Have all issues as to all parties, in this action, before the trial court or agency been disposed of? (In consolidated actions, all issues as to all parties in all actions must have been disposed of.) Yes No

If not, has the order been properly certified as final pursuant to R.4:42-2? Yes No

For criminal, quasi-criminal and juvenile actions only:

Give a concise statement of the offense and the judgment including date entered and any sentence or disposition imposed:

This appeal is from a conviction post judgment motion post-conviction relief. If post-conviction relief, is it the 1st 2nd other _____ SPECIFY

Is defendant incarcerated? Yes No

Was bail granted or the sentence or disposition stayed? Yes No

If in custody, name the place of confinement:

Defendant was represented below by:

Public Defender self private counsel _____ SPECIFY

Notice of appeal and attached case information statement have been served on the following:

	<u>Name</u>	<u>Date of Service</u>
Trial Court Judge	Hon. Andrew J. Smithson, J.S.C.	March 1, 2010
Trial Court Division Manager		
Tax Court Administrator		
State Agency		
Attorney General or attorney for other		
Governmental body pursuant		
<u>R.2:5-1(a), (e) or (h)</u>		
Other parties in this action:		
Name and designation	Attorney name, address and telephone No.	Date of Service
Thomas Cullen and T.C. Management, Inc.	Peter R. Ginsberg, Esq., 12 E. 49 th St., 30 th Floor, New York, NY 10017-8203, (646)374-0029	March 1, 2010
Cherokee Pennsauken Cherokee Camden, LLC	Jeffrey D. Smith, Esq., 500 Frank W. Burr Blvd., Teaneck, NJ and 07666, (201) 928-1100	March 1, 2010
Bennett Mohin	Pro se, 22 East Homestead Avenue, 2 nd Floor, Collingswood, NJ 08108, (856) 495-6718	March 1, 2010

Attached transcript request form has been served where applicable on the following:

	<u>Name</u>	<u>Date of Service</u>	<u>Amount of Deposit</u>
Trial Court Transcript Office			
Court Reporter (If Applicable)			
Supervisor of Court Reporters			
Clerk of the Tax Court			
State Agency			

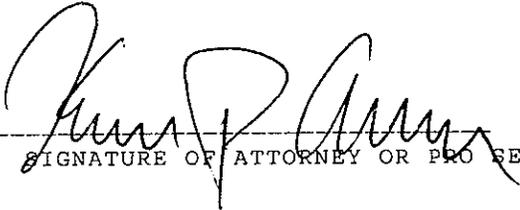
Exempt from submitting the transcript request form due to the following:

- No verbatim record.
- Transcript in possession of attorney or pro se litigant. (Four copies of the transcript must be submitted along with an electronic copy.)
List the date(s) of the trial or hearing:
October 9, 2009, Oral Decision Rendered December 24, 2009
- Motion for abbreviation of transcript filed with the court or agency below. Attach copy.
- Motion for free transcript filed with the court below. Attach copy.

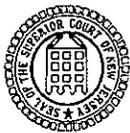
I certify that the foregoing statements are true to the best of my knowledge, information and belief. I also certify that, unless exempt, the filing fee required by N.J.S.A. 22a:2 has been paid.

3-1-2010

DATE



SIGNATURE OF ATTORNEY OR PRO SE LITIGANT



**New Jersey Judiciary
Superior Court - Appellate Division
CIVIL CASE INFORMATION STATEMENT**

Please type or clearly print all information.

TITLE IN FULL (1)

TRIAL COURT OR AGENCY DOCKET NUMBER (2)

State of New Jersey, Department of Environmental Protection v. Thomas Cullen, T.C. Management, Inc., Cherokee Camden, LLC, Cherokee Pennsauken, LLC and Bennet Mohin

MER-L-559-05

■ Attach additional sheets as necessary for any information below.

(3) APPELLANT'S ATTORNEY EMAIL ADDRESS: kevin.auerbacher@dol.lps.state.nj.us

PLAINTIFF DEFENDANT OTHER (SPECIFY)

NAME

Kevin P. Auerbacher, Deputy Attorney General

CLIENT

New Jersey Dept. of Env. Protection

STREET ADDRESS

25 Market Street, P.O. Box 093

CITY

Trenton

STATE

NJ

ZIP

08625

TELEPHONE NUMBER

609-292-6945

(4) RESPONDENT'S ATTORNEY * EMAIL ADDRESS: JSmith@decotiislaw.com

NAME

Jeffrey D. Smith, Esq.

CLIENT

Cherokee Camden & Cherokee Pennsauken

STREET ADDRESS

500 Frank W. Burr Blvd., Suite 31

CITY

Teaneck

STATE

NJ

ZIP

07666

TELEPHONE NUMBER

201-928-1100

* Indicate which parties, if any, did not participate below or were no longer parties to the action at the time of entry of the judgment or decision being appealed.

(5) GIVE DATE AND SUMMARY OF JUDGMENT, ORDER, OR DECISION BEING APPEALED AND ATTACH A COPY:

Oral decision rendered Dec. 24, 2009, Order entered Jan. 14, 2010 dismissing Plaintiff's Second Amended Complaint and granting Summary Judgment to all defendants and denying plaintiff's cross-motion for Summary Judgment.

(6) Are there any claims against any party below, either in this or a consolidated action, which have not been disposed of, including counterclaims, cross-claims, third-party claims and applications for counsel fees? YES NO

If so, has the order been properly certified as final pursuant to R. 4:42-2? (If not, leave to appeal must be sought. R. 2:2-4,2:5-6) YES NO

(If the order has been certified, attach, together with a copy of the order, a copy of the complaint or any other relevant pleadings and a brief explanation as to why the order qualified for certification pursuant to R. 4:42-2.)

(7) Is the validity of a statute, regulation, executive order, franchise or constitutional provision of this State being questioned? (R. 2:5-1(h)) YES NO

(8) GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY:

Plaintiff filed its second amended complaint against defendants in 2006 seeking civil penalties and injunctive relief for defendants' alleged harassment and attempted harassment of the bald eagles inhabiting a nest on Petty's Island near Pennsauken NJ, in violation of the Endangered and Nongame Species Conservation Act. (See attached addendum for continued Procedural History).

(9) TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THE APPEAL AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R. 2:6-2(a)(5). (Appellant or cross-appellant only.):

The Court erred in denying Plaintiff's spoliation motion. It erred in reversing Judge Koenig's denial of Defendants' first Motion to Dismiss. The Court erred in granting Defendants' Summary Judgment when there were material facts in dispute and failed to make required findings of fact, and it erred by denying Plaintiffs' cross-motion for Summary Judgment.

(10)

IF YOU ARE APPEALING FROM A JUDGMENT ENTERED BY A TRIAL JUDGE SITTING WITHOUT A JURY OR FROM AN ORDER OF THE TRIAL COURT, COMPLETE THE FOLLOWING:

- 1. Did the trial judge issue oral findings or an opinion? If so, on what date? December 24, 2009 YES NO
- 2. Did the trial judge issue written findings or an opinion? If so, on what date? _____ YES NO
- 3. Will the trial judge be filing a statement or an opinion pursuant to R. 2:5-1(b)? YES NO

Caution: Before you indicate that there was neither findings nor an opinion, you should inquire of the trial judge to determine whether findings or an opinion was placed on the record out of counsel's presence or whether the judge will be filing a statement or opinion pursuant to R. 2:5-1(b).

DATE OF YOUR INQUIRY: _____

(11)

1. IS THERE ANY APPEAL NOW PENDING OR ABOUT TO BE BROUGHT BEFORE THIS COURT WHICH:

- (A) Arises from substantially the same case or controversy as this appeal? YES NO
- (B) Involves an issue that is substantially the same, similar or related to an issue in this appeal? YES NO

(12)

(13)

2. WAS THERE ANY PRIOR APPEAL INVOLVING THIS CASE OR CONTROVERSY? YES NO

(14)

IF THE ANSWER TO EITHER 1 OR 2 ABOVE IS YES, STATE:

Case Name:
NJ DEP v. Thomas Cullen, et al.

Appellate Division Docket Number:
AM-000660-05T1

(15)

Civil appeals are screened for submission to the Civil Appeals Settlement Program (CASP) to determine their potential for settlement or, in the alternative, a simplification of the issues and any other matters that may aid in the disposition or handling of the appeal. Please consider these when responding to the following question. A negative response will not necessarily rule out the scheduling of a preargument conference.

State whether you think this case may benefit from a CASP conference. YES NO

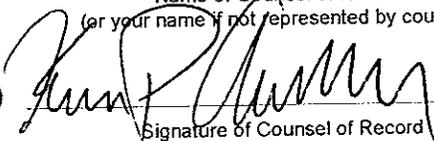
Explain your answer:

The parties have engaged in extensive settlement negotiations over the course of this litigation without success.

(16) New Jersey Department of Envir. Protection
Name of Appellant or Respondent

(17) Kevin P. Auerbacher, Deputy Attorney General
Name of Counsel of Record
(or your name if not represented by counsel)

(18) March 1, 2010
Date

(19) 
Signature of Counsel of Record
(or your signature if not represented by counsel)

Addendum to #8

Judge Keonig denied Defendants' Motion to Dismiss on May 12, 2006. On August 19, 2006, the Appellate Division denied Leave to Appeal. The Court denied Plaintiffs' spoliation violation. The Appellate Division denied leave to appeal. Defendants filed Motions to Dismiss or for Summary Judgment in June, 2009, and Plaintiff filed a Cross-Motion for Summary Judgment. On Dec. 24, 2009, the Honorable Andrew J. Smithson, J.S.C., denied Plaintiff's Cross-Motion and granted Defendants' Motions for Summary Judgment.

DECOTIIS, FITZPATRICK & COLE, LLP
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, New Jersey 07666
(201) 928-1100
Attorneys for Defendants Cherokee Camden,
LLC, and Cherokee Pennsauken, LLC

RECEIVED
JAN 14 2010
DEPUTY CLERK OF SUPERIOR COURT

STATE OF NEW JERSEY; and NEW JERSEY
DEPARTMENT OF ENVIRONMENTAL
PROTECTION;

Plaintiffs,

v.

THOMAS CULLEN; T.C. MANAGEMENT,
INC.; BENNETT MOHEN; CHEROKEE
CAMDEN, LLC; and CHEROKEE
PENNSAUKEN, LLC;

Defendants.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION - MERCER COUNTY
DOCKET NO. MER-L-559-05

CIVIL ACTION

ORDER

This matter having come before the Court on separate Notices of Motion by counsel for defendants Cherokee Camden, LLC and Cherokee Pennsauken, LLC (collectively, "CP"); counsel for defendants Thomas Cullen and T.C. Management; and Bennett Mohin, acting *pro se*, for an Order dismissing plaintiffs' claims against such defendants or granting summary judgment as to those claims, as well as a Notice of Motion by counsel for plaintiffs for an Order granting summary judgment as to claims asserted against CP; and the Court having considered the parties' moving papers, opposition papers, and the reply papers, in addition to the oral arguments of counsel on October 9, 2009, and for the reasons set forth on the record by this Court on December 24, 2009;

IT IS ON THIS 14th DAY OF January 2010,

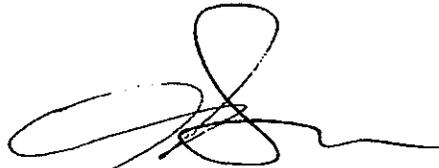
A TRUE COPY
Sue Regan
SUE REGAN
Deputy Clerk of Superior Court

L-559-05

ORDERED that all claims asserted against CP are hereby dismissed with prejudice and summary judgment shall be granted in favor of each defendant as to all claims asserted against them; and it is further

ORDERED that plaintiff's motion for summary judgment is denied; and it is further

ORDERED that a copy of this Order shall be delivered upon all parties of record within seven (7) days of the entry hereof.



HON. ANDREW J. SMITHSON, J.S.C.