

4. At this point in time, the parties have not engaged in discovery to determine: (1) whether the November 28 payment was for the Permanent policy in question; (2) when Permanent received the payment; and (3) when the policy should have become effective given the date of payment.
5. When matters outside the pleadings are included with the moving papers on a motion to dismiss under Superior Court Civil Rule 12(b)(6), the motion is considered to be a motion for summary judgment.¹
6. Summary judgment is not appropriate when the Court does not have sufficient facts in the record to enable it to apply the law to the facts before it.²
7. Against this background, the Court finds summary judgment to be premature at this stage in the proceedings. The record, as it stands, is undeveloped and insufficient to answer the questions presented above. Therefore, Permanent's motion is **DENIED** without prejudice.
8. The Court will permit a follow-up motion for summary judgment after the parties establish a more complete record. At that time, the Court will attempt to answer the above questions and address any other issues developed through discovery.

IT IS SO ORDERED this 22nd day of November, 2022

/s/ Francis J. Jones, Jr.

Francis J. Jones, Jr., Judge

cc: Original to the Prothonotary
Kenneth M. Roseman, Esquire
Periann Doko, Esquire

¹ See *Pepper Reinholz Architects, Inc v. Owen Manor, L.P.*, 2006 WL 2338048, at *1 (Del. Super. June 15, 2006).

² See *Savor v. FMR Corp.*, 2003 WL 21054394, at *1 (Del. Super. Apr. 3, 2003).