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| DOCKET NO. CV-22-6123753-S | : | STATE OF CONNECTICUT |
| | : | |
| NEAL LUSTIG | : | SUPERIOR COURT |
| | : | |
| V. | : | JUDICIAL DISTRICT OF NEW HAVEN |
| | : | |
| | : | AT NEW HAVEN |
| POMPERAUG DISTRICT | : | |
| DEPARTMENT OF HEALTH, ET AL. | : | APRIL 29, 2024 |

**MEMORANDUM OF DECISION**
**MOTIONS FOR SUMMARY JUDGMENT #125 & #126[1]**

I.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The plaintiff, Neal Lustig, filed a seven count revised complaint alleging breach of contract on September 27, 2022, against the following defendants: Pomperaug District Department of Health (PDDH); Housatonic Valley Health District (HVHD); Lisa Morrissey, PDDH's current health director; and the towns of Southbury, Woodbury, Oxford, New Milford, and Washington, the constituent municipalities that make up PDDH. The plaintiff alleges the following facts in his revised complaint. PDDH was formed under General Statutes § 19a-241 as an instrumentality of the towns of Southbury, Woodbury, and Oxford. The HVHD was formed under § 19a-241, and as of February 1, 2022, became the successor in interest of the district, serving as an instrumentality of the towns of New Milford, Washington, Southbury, Woodbury, and Oxford. The plaintiff was the former health director of PDDH for thirty three years, and after a dispute arose between the plaintiff and a former employee, the plaintiff entered into a settlement agreement with PDDH whereby the plaintiff would retire from his position, and in

[1]Count six of the second revised complaint pertains to the Town of New Milford, and count seven of the second revised complaint pertains to the Town of Washington.

return, the district would pay the plaintiff $120,000. The settlement agreement provided that the $120,000 payment would be made in two installments of $60,000. PDDH paid the first installment to the plaintiff on September 16, 2021. The second installment, which was due to the plaintiff on May 15, 2022, was never paid by PDDH, despite the plaintiff complying with the terms of the agreement. The plaintiff claims that PDDH and the current health director withheld the payment of the second installment intentionally and without good cause, in breach of the settlement agreement. The plaintiff further claims that the defendants breached their contract and are vicariously, jointly or severally liable pursuant to §§ 7-465, 19a-241, and 19a-243.

On October 27, 2022, the Town of New Milford (Milford) and the Town of Washington (Washington) collectively, the (defendants)[2] filed answers to the revised complaint. The defendant Milford left the plaintiff to his proof on count six of the revised complaint and the defendant Washington left the plaintiff to his proof on count seven of the revised complaint. On November 14, 2022, the town of Southbury (Southbury) and the town of Woodbury (Woodbury), filed a motion to strike counts three and four of the plaintiff's revised complaint (#113). On July 11, 2023, the court granted Southbury's and Woodbury's motion to strike (#113.10, #113.50). On July 27, 2023, Southbury and Woodbury filed a motion for judgment on the stricken counts three and four. On July 28, 2023, the plaintiff filed an extension of time to replead (#131), and the court granted the plaintiff's extension to October 15, 2023 (#131.10). On September 28, 2023 Southbury and Woodbury filed a renewed motion for judgment on the stricken counts three and four (#140). Counsel for Southbury and Woodbury represented in the motion that counsel for the

[2]For purposes of this motion, any reference to the defendants is to the Town of New Milford and the Town of Washington.

plaintiff did not intend to replead and that he did not oppose the motion for judgment on counts three and four. The court therefore granted the motion for judgment on counts three and four and entered judgment in favor of Southbury and Woodbury on those counts (#140.10).

On June 28, 2023, the defendants, Milford and Washington filed the present motions for summary judgment (#125, #126), and supporting memoranda of law. The defendants argue that they are not liable for breach of contract because under the express terms of the agreement, they are not parties to the agreement, and that §§ 7-465, 19a-241, and 19a-243 do not impose any liability, whether it be vicariously, jointly or severally, on the defendants.[3] On October 13, 2023, the plaintiff filed an objection and a memorandum of law in opposition to the defendants' motions for summary judgment. Remote oral argument was held on both motions on December 11, 2023. The parties agreed to waive the 120 day time requirement for the court's decision to April 30, 2024.

II.

LEGAL ANALYSIS

"Practice Book § 17-49 provides that summary judgment shall be rendered forthwith if the pleadings, affidavits and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. In deciding a motion for summary judgment, the trial court must view the evidence in the light most

[3]The arguments made by the defendants in their motions for summary judgment are nearly identical to the arguments that were made by the towns of Southbury and Woodbury in their motion to strike.

favorable to the nonmoving party." (Internal quotation marks omitted.) *Graham* v. *Commissioner of Transportation*, 330 Conn. 400, 414-15, 195 A.3d 664 (2018). "[S]ummary judgment is appropriate only if a fair and reasonable person could conclude only one way." *Dugan* v. *Mobile Medical Testing Services, Inc.*, 265 Conn. 791, 815, 830 A.2d 752 (2003). "The party seeking summary judgment has the burden of showing the absence of any genuine issue [of] material facts which, under applicable principles of substantive law, entitle him to a judgment as a matter of law . . . and the party opposing such a motion must provide an evidentiary foundation to demonstrate the existence of a genuine issue of material fact. . . . A material fact . . . [is] a fact which will make a difference in the result of the case." (Internal quotation marks omitted.) *Doe* v. *West Hartford*, 328 Conn. 172, 191-92, 177 A.3d 1128 (2018). "It necessarily follows that it is only [o]nce [the] defendant's burden in establishing his entitlement to summary judgment is met [that] the burden shifts to [the] plaintiff to show that a genuine issue of fact exists justifying a trial. . . . Accordingly, [w]hen documents submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue." (Internal quotation marks omitted.) *Squeo* v. *Norwalk Hospital Assn.*, 316 Conn. 558, 594-95, 113 A.3d 932 (2015). "Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue. . . . It is not enough, however, for the opposing party merely to assert the existence of such a disputed issue. Mere assertions of fact . . . are insufficient to establish the existence of a material fact and, therefore, cannot refute evidence properly presented to the court under Practice Book § 380 [now § 17-45]." (Internal quotation marks omitted.) *Fiano* v. *Old*

*Saybrook Fire Co. No. 1, Inc.*, 332 Conn. 93, 101, 209 A.3d 629 (2019). "[I]f the contract is unambiguous, its interpretation and application is a question of law for the court, permitting the court to resolve a breach of contract claim on summary judgment if there is no genuine dispute of material fact." (Internal quotation marks omitted.) *Tolland Meetinghouse Commons, LLC* v. *CXF Tolland, LLC*, 211 Conn. App. 1, 16, 271 A.3d 1118 (2022).

The defendants, in their motions for summary judgment, argue that they are entitled to judgment as a matter of law as to counts six and seven of the plaintiff's revised complaint, asserting that there are no genuine issues of material fact because as a matter of law they are not liable to the plaintiff for breach of contract predicated upon §§ 7-465, 19a-241, and 19a-243. Specifically, the defendants argue that §§ 7-465, 19a-241, and 19a-243, do not impose any liability, whether it be vicariously, jointly or severally, on the defendants. The defendants also argue that because they are not parties to the agreement, they cannot be held vicarously, jointly or severally liable to the plaintiff. The plaintiff responds that the defendants may be held vicariously liable for breach of the settlement agreement between the plaintiff and PDDH and HVHD. More specifically, citing *Rettig* v. *Woodbridge*, 304 Conn. 462, 482, 41 A.3d 267 (2012), the plaintiff argues that because the *Rettig* court held that "municipal boards and agencies are extensions of the towns they serve, created for the purpose of performing those functions that towns are statutorily required or permitted to perform"; then the health district was acting on behalf of the moving defendants when it signed the settlement agreement. The plaintiff argues that similar to the court's reasoning in *Rettig*, he was not only an employee of the PDDH/HVHD, but also an employee of the constituent towns of the district. The agreement that ended the plaintiff's employment with the district ran to the benefit of the constituent municipalities of the district,

including the movants and, therefore, the movants must be considered parties to the agreement. The plaintiff claims that the district entered into the agreement on behalf of the constituent municipalities, including the movants, and the district, in executing the agreement, did so on behalf of the constituent municipalities that fund the district's operations according to statute.

A.

Claim under General Statutes § 7-465

Counts six and seven of the plaintiff's revised complaint allege that the defendants are to be held vicariously, jointly and severally liable to the plaintiff for breach of contract. The defendants argue that they are entitled to judgment as a matter of law on counts six and seven of the revised complaint because § 7-465 is inapplicable to breach of contract claims, and that § 7-465 does not impose any liability, whether it be vicariously, jointly or severally, on the defendants.

Section 7-465 (a) provides in relevant part: "Any town, city or borough . . . shall pay on behalf of any employee of such municipality . . . all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded for . . . physical damages to person or property . . . if the employee, at the time of the . . . damages complained of, was acting in the performance of his duties and within the scope of his employment, and if such occurrence . . . was not the result of any wilful or wanton act of such employee in the discharge of such duty."

In support of their argument that § 7-465 does not apply to contract claims, the defendants cite to *Altfeter* v. *Naugatuck*, 53 Conn. App. 791, 793, 732 A.2d 207 (1999). In *Altfeter*,

purchasers sued their vendors, the original vendors, borough, water pollution control board, and its executive director, who was also the original vendors' attorney, alleging, inter alia, breach of contract. Id., 791. The trial court dismissed the claims against the borough and board and granted summary judgment in favor of the executive director and original vendors. See id., 802-03. The plaintiffs claimed on appeal, with respect to the municipal defendants, that the trial court improperly determined that § 7-465 does not apply to contractual relations. Id., 797.

As to the plaintiff's contract claim against the municipalities, the Appellate court reasoned: "[Section] 7-465 [is a] municipal employee indemnification statute. . . . [T]he legislature has provided for indemnification by municipalities of municipal officers, agents or employees who incur liability for certain of their official conduct. . . . To invoke [§] 7-465, [the plaintiffs] first must allege in a separate count and prove the *employee's* duty to the individual injured and the breach thereof. Only then may the plaintiff go on to allege and prove the town's liability by indemnification. . . . While § 7-465 provides an indemnity to a municipal employee from his municipal employer in the event the former suffers a judgment under certain prescribed conditions, it is quite clear that the municipality does not assume the liability in the first instance. . . . The plaintiffs do not allege in their amended complaint a claim against the borough for indemnification of its employee's liability. The plaintiffs' complaint alleges breach of contract . . . by the borough. Section 7-465 does not apply to those allegations." (Citations omitted; emphasis in original; internal quotation marks omitted.) *Altfeter* v. *Naugatuck*, supra, 53 Conn. App. 799.

In *Banks* v. *City of New Haven*, Superior Court, judicial district of Waterbury, Complex Litigation Docket, Docket No. X01-CV-00-0166009-S (December 24, 2002, *Hodgson, J.*), the plaintiff, administratrix of the decedent, alleged that the City of New Haven had a duty under § 7-465 to indemnify for its unnamed agents breach of a promise to delay demolition of the decedent's property. In granting summary judgment, the court, citing *Altfeter*, held that "[§ 7-465] provides a right of indemnity to the employee for all sums which such employee becomes obligated to pay by reason of the liability imposed upon such employee by law for damages awarded . . . for physical damages to person or property . . . if the employee at the time of the occurrence . . . was acting in the performance of his duties and within the scope of his employment. . . . To sustain an action against a municipality under this statute there must be a judgment against the employee under certain prescribed conditions. . . . The indemnification statute, § 7-465 does not require a municipality to indemnify on the basis of breach of contract or other claims not specifically stated in the text of the statute." (Citations omitted.) Id.

Based on the legal principles cited above, and the clear and unambiguous language of the statute, § 7-465 is inapplicable to the present case and does not impose liability on the defendants for an alleged breach of contract claim. Moreover, the plaintiff has conceded that § 7-465 is inapplicable to impose liability upon the movants based on the facts alleged and has withdrawn that portion of the claim. Therefore, summary judgment is granted as to the plaintiff's claim pursuant to § 7-465.

B.

Contractual Language

The resolution of the present issue turns on the interpretation of the agreement between the plaintiff and PDDH, and the statutory construction of §§ 19a-241 and 19a-243. The court will first look to the language of the agreement.

The defendant argues that to the extent the court reviews this matter on the basis of the express terms of the Agreement and Release, the document speaks for itself. The defendant argues that the two signatories to the agreement are the plaintiff and Anne Neumann, in her capacity as the duly authorized Chairperson of the Board of PDDH. The defendant claims that the express terms of the contract obligates PDDH not the defendant, to make separation payments to the plaintiff. The defendant further argues that because the agreement does not mention the defendant, let alone place any obligations on the defendant relative to the plaintiff, it cannot be held vicariously, jointly or severally liable for PDDH's alleged breach of the agreement. The agreement further obligates PDDH, not the defendant, to make separation payments to the defendant. The defendant argues that the agreement expressly states that it becomes effective and binding upon the signing of the agreement by the plaintiff and PDDH. Consequently, the defendant claims, there is no requirement in the agreement that any approval by the defendant is required in order for the agreement to become binding on the signatory parties.

The court begins with the applicable legal principles and standard of review for the interpretation of contracts. "It is well established that [w]here there is definitive contract

language, the determination of what the parties intended by their contractual commitments is a question of law. . . .

"In ascertaining the contractual rights and obligations of the parties, we seek to effectuate their intent, which is derived from the language employed in the contract, taking into consideration the circumstances of the parties and the transaction. . . . We accord the language employed in the contract a rational construction based on its common, natural and ordinary meaning and usage as applied to the subject matter of the contract. . . . Where the language is unambiguous, we must give the contract effect according to its terms. . . . Where the language is ambiguous, however, we must construe those ambiguities against the drafter. . . .

"Furthermore, '[a] contract is unambiguous when its language is clear and conveys a definite and precise intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous." (Citations omitted; internal quotation marks omitted.) *Harbour Pointe, LLC* v. *Harbour Landing Condominium Ass'n, Inc.*, 300 Conn. 254, 259-61, 14 A.3d 284 (2011).

With these legal principles in mind, the court turns to the defendants' claim that the express terms of the agreement does not impose any liability on the defendant for PDDH's alleged breach of contract. The agreement between the plaintiff and PDDH state's in relevant part:

> This Agreement and Release . . . is dated as of August 11, 2021, and is between Neal Lustig of Madison, Connecticut ("You") . . . and the Pomperaug District Department of Health and its current and former board members, officials, empolyees, volunteers, agents and representatives (collective "the district").
>
> You and the District intend to be legally bound by this Agreement and are entering into it in reliance on the promises made to each other in this Agreement. Under this Agreement, Your employment will end, and You and the District agree to settle all issues concerning Your employment and retirement from employment.
>
> 1. Retirement and Separation.
>
> a. Effective August 13, 2021, you will retire from District service ("Separation Date"), at which point Your employment will end.
>
> b. As consideration for this agreement, the District shall continue your employment from the date of this Agreement through August 13, 2021, and will agree not to pursue any pending discipline matters.
>
> c. The District shall also pay you a separation payment of $120,000 . . . less all required state, federal and local withholdings, and any elected withholdings or deductions, in two equal installments as follows:
>
> 1. The first payment of $60,000 will be made 30 . . . days

The later of (A) the expiration of the revocation period Described in Paragraph 10 or (B) the Board's approval And authorization of this Agreement.

2. The second payment of $60,000 will be made 6 . . . months after the first payment is made unless extended as described below.

If, for any public health reason as determined by the Board in its sole discretion, including but not limited to the COVID-19 pandemic or any federal, state, local, executive or governmental order, the District cannot make the second payment, You specifically agree and consent to the District making the second payment up to 60 . . . days after its due date."

10. Revoking the Agreement. You have seven days from the date You sign the Agreement to revoke and cancel it (the "Revocation Date"). To revoke this Agreement, a clear, written cancellation letter, signed by You must be received by the District's Board Chair, Anne Neumann, before the close of business on the eighth (8th) calendar day following the date You sign this Agreement. The District will make no payments other than those required by law or contract until the expiration of the day after the Revocation Date. If you revoke this Agreement all of its terms shall be null and void and you will be subjected to all pending discipline.

Def. Ex. A, Mot. Summ Judgmt, #125, #126.

The express terms of the agreement are clear. The agreement is between the plaintiff and PDDH, both of whom are signatories to the agreement. The defendants are not part of the

agreement, nor are they signatories to the agreement. The agreement obligates PDDH, not the defendants, to make separation payments to the plaintiff in installments by a certain period of time. The agreement makes no mention of the defendants nor does it obligate the defendants in any manner to the plaintiff. Nor is there any language in the express terms that imposes any liability on the defendants should PDDH fail to perform under the contract. Moreover, the agreement expressly states that it becomes effective and binding upon the signing of the agreement by the plaintiff and PDDH. Consequently, there is no required approval by the defendant for the agreement to become binding on the two signatories to the agreement, namely, the plaintiff and PDDH.

"It is well established that [t]he elements of a breach of contract action are the formation of an agreement, performance by one party, breach of the agreement by the other party and damages." (Internal quotation marks omitted.) *Meadowbrook Center, Inc.* v. *Buchman*, 149 Conn. App. 177, 185, 90 A.3d 219 (2014). "[I]t is a fundamental principle of contract law that liability for breach of contract is confined to contracting parties or those who consent to be bound by them." *Bruno* v. *Whipple*, 138 Conn. App. 496, 506, 54 A.3d 184 (2012), cert. denied, 331 Conn. 911, 203 A.3d 1245 (2019). "[O]nly parties to contracts are liable for their breach. [T]he obligation of contracts is limited to the parties making them, and, ordinarily, only those who are parties to contracts are liable for their breach. Parties to a contract cannot thereby impose any liability on one who, under its terms, is a stranger to the contract, and, in any event, in order to bind a third person contractually, an expression of assent by such person is necessary. . . . In other words, [a] person who is not a party to a contract (i.e., is not named in the contract and has not executed it) is not bound by its terms." (Citation omitted; internal quotation marks omitted.)

*FCM Group, Inc.* v. *Miller*, 300 Conn. 774, 797, 17 A.3d 40 (2011). "[I]t goes without saying that a contract cannot bind a nonparty. . . . Thus, [a]s a general rule, [an action] for breach of contract may not be maintained against a person who is not a party to the contract." (Citations omitted; internal quotation marks omitted.) *FCM Group, Inc.* v. *Miller*, 300 Conn. 774, 798, 17 A.3d 40 (2011).

In *Bruno*, the plaintiff brought an action for, inter alia, breach of contract against the owner of a limited liability company that had contracted with the plaintiff to construct a home for the plaintiff and her husband at the time. *Bruno* v. *Whipple*, supra, 138 Conn. App. 498. The contract was between the property owners and the limited liability company who was to construct the home. Id., 509. The court found that the defendant signed the contract in his representative capacity as a member of the company. Id., 500. Because the defendant in *Bruno* signed in his representative capacity rather than his individual capacity, the Appellate Court held that the defendant was entitled to summary judgment on the breach of contract claim because he was not a party to the contract and, therefore, could not be held liable for the alleged breach. Id., 509-10.

Although the type of contract entered into by the parties in *Bruno* is different from the one entered into here, the court's analysis is instructive. In the present case, the express terms of the agreement indicate that no contractual relationship between the plaintiff and the defendant existed or was ever contemplated. The agreement was signed by the plaintiff and PDDH, and clearly sets forth the obligations to which the plaintiff and PDDH are bound under the agreement. Moreover, the plaintiff's revised complaint alleges that the plaintiff entered into the agreement with PDDH. The revised complaint here does not allege that the defendants were parties to the

agreement. Indeed, the revised complaint acknowledges that the defendants were *not* parties to the agreement, as counts six and seven allege that each constituent municipality is only "vicariously, jointly and severally liable to the plaintiff for payment of the second installment of $60,000." Pl.'s Second Revised Complaint, Docket No. 107.00.

C.

Claim under General Statutes §§ 19a-241 and 19a-243

The defendants argue that General Statutes §§ 19a-241 and 19a-243 do not create vicarious liability on a municipality as a result of a claim of breach of contract against a health district. The plaintiff argues that because the statute specifically mentions that a constituent municipality of a health district may not be liable for the district's borrowing obligations but is silent about contractual obligations, the constituent municipalities may be vicariously liable for the district's breach of contract.

Section 19a-241 relates to the formation of district departments and authorizes "[t]owns, cities, and boroughs . . . to form district departments of health, which shall be instrumentalities of their constituent municipalities." Section 19a-243 relates to the rules and regulations of a district and grants district departments of health broad authority "(a) (1) [t]o sue and be sued; (2) to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the health district; (3) to make and from time to time amend and repeal bylaws, rules and regulations; (4) to acquire real estate; (5) to provide for the financing of the programs, projects or other functions of the district in the manner described in subsection (b) of this section; (6) to join an existing health district; and (7) to have such other powers as are necessary to properly carry

out its powers as an *independent entity of government.*" (Emphasis added.). Subsection (b) provides in relevant part: "A district may, without limiting its authority under other provisions of law, borrow money for the purpose of carrying out or administering a district project, program or other function authorized under this chapter, or for the purpose of refinancing existing indebtedness, or temporarily in anticipation of receipt of current revenues . . . . The district may enter into note, loan or other agreements providing that such borrowings shall be payable from or secured by one or more of the following: (1) A pledge, lien, mortgage or other security interest in any or all of the income, proceeds, revenues and property, real or personal, of its projects, assets, programs or other functions, including the proceeds of payments, grants, loans, advances, guarantees or contributions from the federal government, the state of Connecticut, the constituent municipalities of the district or any other source; or (2) a pledge, lien, mortgage or other security interest in the property, real or personal, of projects to be financed by the borrowing. Such borrowings and obligations shall not constitute an indebtedness within the meaning of any debt limitation or restrictions on, and shall not be obligations of, the state of Connecticut or any municipality. No constituent municipality of a district shall be liable for any such borrowing or obligation of the district upon default. Neither members of the board nor any person executing on behalf of the district any note, mortgage, pledge, loan, security or other agreement in connection with the borrowing of money by a district shall be personally liable on the obligations thereunder or be subject to any personal liability or accountability by reason of the entrance into such agreements."

"When construing a statute, [the court's] fundamental objective is to ascertain and give effect to the apparent intent of the legislature. . . . In other words, [the court seeks] to determine,

in a reasoned manner, the meaning of the statutory language as applied to the facts of [the] case, including the question of whether the language actually does apply. . . . The meaning of a statute shall, in the first instance, be ascertained from the text of the statute itself and its relationship to other statutes. If, after examining such text and considering such relationship, the meaning of such text is plain and unambiguous and does not yield absurd or unworkable results, extratextual evidence of the meaning of the statute shall not be considered." (Citations omitted; internal quotation marks omitted.) *Seramonte Associates, LLC* v. *Hamden*, 345 Conn. 76, 83-84, 282 A.3d 1253 (2022).

The plain text of §§ 19a-241 and 19a-243 is devoid of any language that would indicate a constituent municipality can he held vicariously liable for breach of a contract entered into by a health district. As § 19a-243 (a) (7) states, the district is authorized "to have such other powers as are necessary to properly carry out its powers as an *independent* [and distinct] entity of government [separate from the municipality]." (Emphasis added.) Moreover, the plain language of § 19a-243 (b) states,"[t]he district may enter into note, loan or *other agreements* [and that] . . . [s]uch borrowings and *obligations* shall not constitute an indebtedness within the meaning of any debt limitation or restrictions on, and shall not be obligations of, the state of Connecticut or any municipality. No constituent municipality of a district shall be liable for any such borrowing or *obligation* of the district upon default." (Emphasis added.) Borrowing obligations as contemplated by the statute, are in effect contractual agreements and or obligations. Thus, when viewing the language of § 19a-243 (a) and (b), a sensible reading suggests that the district is an independent government entity, separate from the state and municipality, that can enter into contractual agreements and or other contractual obligations, and that neither the state of

Connecticut nor the municipality of the district "shall be liable for any such borrowing or [other] obligation of the district upon default." The court can see no reason, and the plaintiff has not put forth one, why a contractual obligation such as the one in the present case does not fall within the language of § 19a-243 (b). The court therefore concludes that the plain language of the statutory provisions set forth in § 19a-243 (b) does not support the plaintiff's position that pursuant to said provisions, the constituent municipalities are vicariously liable for the districts' alleged breach of contract. Indeed, the court concludes that the language of the governing statutes, suggests the opposite.

In a different context, the trial court in *Pearson* v. *Coan Enterprises*, Superior Court, judicial district of New Britain, Docket No. CV-11-6009925-S (July 10, 2012, *Swienton, J.*) held that a constituent municipality cannot be held vicariously liable for the acts and omissions of the health district. In *Pearson*, the plaintiff alleged that he could not escape a bar fight that occurred at a bar in Bristol because an exit door was locked, resulting in his injury. Id. The plaintiff brought an action against the constituent municipality, Bristol, alleging that the city was vicariously liable for the health district's failure to take action against the bar despite the health district's knowledge that the bar violated several city ordinances and safety codes. Id. The court found that "neither the Bristol/Burlington Health District, nor its director of health . . . are agents of the city of Bristol." Id. The court reiterated that "[p]ursuant to [§] . . . 19a–243, the health district has broad statutory authority and is an entity that is separate and distinct from any municipality." Id.

In *Gray* v. *Bogdanovics*, Superior Court, judicial district of New Britain, Docket No. CV-10-6005190-S (November 8, 2011, *Swienton, J.*) (52 Conn. L. Rptr. 787), the trial court was presented with a similar situation to that in *Pearson*. In *Gray*, the plaintiff sustained injuries while on the crew team of a public high school in the town of Burlington. Id. The plaintiff brought an action against the rowing club, who then filed an apportionment claim against the town of Burlington, claiming that the town could be held vicariously liable for the acts or omissions of the regional board of education. Id. The court found that "[a]lthough Burlington has an obligation to provide funding for public education, [t]he money appropriated by any municipality for the maintenance of public schools shall be expended by and in the discretion of the board of education." (Internal quotation marks omitted.) Id; see General Statutes § 10-222 (a). "Even so, [Regional School District (RSD)] # 10 retains supervision and policy making authority over Lewis S. Mills High School and its crew team. As a regional school district, RSD # 10 assumes the responsibility for administration of all programs which are provided in the member towns. . . . [See] General Statutes § 10-46a; see also General Statutes § 10-220 et seq. (providing boards of education, including regional boards, extensive and exclusive authority independent of the towns with which they are affiliated)." (Internal quotation marks omitted.) Id., 787-88.

"The apportionment plaintiffs argue that Burlington can be vicariously liable for RSD # 10's alleged acts or omissions based on an agency principle. They assert that RSD # 10 is an agent of Burlington, and as such, the municipality can be held liable for the board's acts or omissions. However, Burlington exerts no control over RSD # 10. The regional boards of education have been established as *separate entities* of the municipality, with separate and

discrete functions and broad statutory authority. See General Statutes § 10–220. Therefore, there is no basis to hold Burlington vicariously liable for RSD # 10's acts or omissions." (Emphasis added.) Id., 788.

Although both *Pearson* and *Gray* involved claims of negligence against the regional districts, rather than a claim for breach of contract as in the present case, the analysis is instructive. Pursuant to § 19a-241, the health district is a governmental entity separate from the constituent municipalities. The defendants have delegated "all the authority as to public health required of or conferred upon the constituent municipalities" to the health district. See § 19a-241 (a). Because the health district is a separate entity, there is no basis to impose vicarious liability on the constituent municipalities of the district.

In further support of his argument that the constituent municipalities are vicariously liable for the district's alleged breach of contract, the plaintiff argues that he was "not only an employee of the PDDH/HVHD, but also an employee of the constituent towns of the district"; and that "[w]hen the PDDH entered into an agreement with [him]to end [his] employment as health director, it was doing so on behalf of its constituent municipalities . . . ." Pl. Resp. MSJ Docket No. 145.00, p. 3-4. The plaintiff argues that, as such, "those municipalities – absent statutory protection limiting their liability – are therefore liable for the promises made by the district to compensate [him] in exchange for . . . [his] valuable consideration to leave employment and waive any potential claims arising therefrom." Pl. Resp. MSJ Docket No. 145.00, p. 4.

In support of the above argument, the plaintiff analogizes the facts of the present case to *Rettig* v. *Woodbridge*, supra, 304 Conn. 482-83, where the Supreme Court held that an officer

who was an employee of the district animal control, was an employee of the towns served by the district for purposes of the exclusivity provision of the Workers' Compensation Act. The defendants' argue that *Rettig* is inapposite because the court focused on a narrow area of the law, the Workers' Compensation Act. The defendant argues that the issues before the court in *Rettig* did not involve any of the statutes upon which the plaintiff in the present case relies. The defendants further argue that *Rettig* did not involve claims of vicarious liability, breach of contract, or claims against a health district.

The court agrees that *Rettig* is clearly distinguishable from the present case. In addition, the issues raised in *Rettig* are starkly different from the issues raised in the present case. The statutory provisions implicated in *Rettig* are different from the statutory provisions which govern the formation and duties and responsibilities of a health district. See id., 483.

The dispositive issue in *Rettig* was "whether an employee of a municipal district established pursuant to General Statutes § 7-330 [was] an employee of the towns comprising the district for purposes of General Statutes § 31-284 (a), the exclusivity provision of the Workers' Compensation Act (act), General Statutes § 31-275 et seq." Id., 464-65. In the present case, "[t]he question before the court on [the defendants'] motions is whether the constituent municipalities of the health districts may be held vicariously liable for the defendant districts' [alleged] failure to comply with the terms of the settlement agreement by refusing to make the second installment payment to the [p]laintiff." Pl. Resp. MSJ Docket No. 145.00, p. 2. The issue here is not whether Lustig was an employee of the constituent municipalities for purposes of determining whether the exclusivity provision of the Workers' Compensation Act applies, but

rather, whether under the express terms of a separation agreement between Lustig and the health district, the constituent municipalities can be held vicariously liable for an alleged breach of that agreement by the districts.

Section 7-330 provides in relevant part: "Any two or more towns, cities or boroughs may, by vote of their legislative bodies, vote to form a district for the performance of any municipal function which the constituent municipalities of such district may, under any provision of the general statutes or of any special act, perform separately." The language of § 7-330 clearly relates to the formation of "municipal districts"; whereas, the language of § 19a-241, relates to the formation of "district departments of health." Section 19a-241 (a) provides in relevant part: "Towns, cities and boroughs, by vote of their respective legislative bodies, after a public hearing, may unite to form *district departments of health*, which shall be instrumentalities of their constituent municipalities. . . . [W]hich shall exercise all the authority as to public health required of or conferred upon the constituent municipalities by law and shall have the powers of the district set forth in section 19a-243." (Emphasis added.).

At first glance, the language in both §§ 7-330 and 19a-241 appear nearly identical. However, upon a closer review of the statutes, it is clear that § 19a-241 governs district departments of health, § 19a-243 provides the rules and regulations for the district departments of health that were formed under § 19a-241, and § 7-330 governs municipal districts. Moreover, § 7-330 is entirely silent as to district departments of health. Accordingly, the plaintiff's argument that *Rettig* supports his contention that the defendants can be held vicariously liable for

the district's alleged breach of contract is unavailing as the statutes in the present case relate to district departments of health.

Further, as previously stated, *Rettig* implicated the exclusivity provision of the Workers' Compensation Act. *Rettig* v. *Woodbridge*, supra, 304 Conn. 473. "The entire statutory scheme of the [Workers' Compensation Act] is directed toward those who are in the employer-employee relationship as those terms are defined in the act . . . ." (Internal quotation marks omitted.) Id. "In short, if the defendant was the plaintiff's employer, the plaintiff [is] relegated to the remedies afforded by the [Workers' Compensation Act]." (Internal quotation marks omitted.) Id., 474. The Supreme Court in *Rettig* considered whether "the [plaintiff] . . . can . . . recover damages against the defendants for injuries arising out of her employment or [whether she was] . . . barred from doing so by the exclusivity provision of the [Workers' Compensation Act]." Id. The rights and obligations of the employer and employee in *Rettig*, as the court found, were governed by the Workers' Compensation Act, and not based upon a theory of vicarious liability. Unlike *Rettig*, the rights and obligations in the present case, are governed by the express terms of the agreement between the plaintiff and district and do not implicate the Workers' Compensation Act. The court does not need to consider the Workers' Compensation Act as it relates to the plaintiff and whether the defendants are vicariously liable for the district's alleged breach of the settlement agreement. Rather, it is the express terms of the agreement, and the plain language §§ 19a-241 and 19a-243 which govern the formation and duties and obligations of a health district, to which the court has looked, to determine the rights and obligations of the parties to the agreement, and the rights and obligations of the constituent municipalities.

Thus, when construing the express terms of the settlement agreement, applying the facts of the present case to §§ 19a-241 and 19a-243, and to relevant case law on this issue, the court concludes that the defendants are not vicariously, jointly or severally liable to the plaintiff for any alleged breach of agreement and release by PDDH as a matter of law.

## CONCLUSION

For the foregoing reasons, the defendants' motions for summary judgment as to counts six and seven is granted.

Juris No. 421279

Wilson, J.