

DOCKET NO: LND-CV-21-6143116-S : SUPERIOR COURT
131 BEACH ROAD, LLC : JUDICIAL DISTRICT OF HARTFORD
V. : AT HARTFORD
TOWN PLAN AND ZONING :
COMMISSION OF THE TOWN OF :
FAIRFIELD, ET AL. : MAY 31, 2024

#152.00

DOCKET NO: LND-CV-21-6143115-S : SUPERIOR COURT
ALDEN H. STEVENS, ET AL. : JUDICIAL DISTRICT OF HARTFORD
V. : AT HARTFORD
TOWN PLAN AND ZONING :
COMMISSION OF THE TOWN OF :
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#144.00

MEMORANDUM OF DECISION RE MOTION TO ENFORCE SETTLEMENT AGREEMENT

Before the court is the motion of Alden Stevens, Patricia Stevens, John Kubica and Judith Kubica (collectively, the “movants”),¹ to enforce a purported settlement agreement with 131 Beach Road, LLC (“131 Beach”),² with respect to a proposal to settle the above-captioned matters (the “settlement agreement”), subject to approval by the defendant, the Town Plan and Zoning Commission of the Town of Fairfield (the “Commission”).³ These consolidated cases involve 131 Beach’s appeal from the Commission’s denial of a zone change and the movants’

¹ The movants are the named plaintiffs in the matter captioned *Stevens v. Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Land Use Docket, Docket No. LND-CV-21-6143115-S (“*Stevens v. Commission*”), and are intervening defendants in the matter captioned, *131 Beach Road, LLC v. Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Land Use Docket, Docket No. LND-CV-21-6143116-S (“*131 Beach v. Commission*”). The movants are owners of properties located adjacent to or within one hundred feet from the proposed site.

² 131 Beach is the plaintiff in *131 Beach v. Commission* and an intervening defendant in *Stevens v. Commission*.

³ The Commission is a defendant in both *Stevens v. Commission* and *131 Beach v. Commission*.

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HARTFORD J.D.

appeal of the Commission's conditional approval of 131 Beach's application for a multi-family housing development proposed for 131 Beach, Rd., Fairfield, Connecticut (131 Beach Rd.). The movants assert that subsequent to a settlement discussion in May of 2023, a settlement agreement was reached such that this court should summarily enforce the agreement. 131 Beach demurs on the basis that the terms of the agreement were neither clear nor unambiguous and, moreover, that the terms of the agreement are in dispute. Because the court agrees with 131 Beach, the motion is denied.

The following procedural history is relevant to this decision. The proposed development was for the construction of a forty-one unit residential complex pursuant to General Statutes § 8-30g.⁴ *131 Beach Road, LLC v. Town Plan & Zoning Commission*, Superior Court, judicial district of Hartford, Land Use Docket, Docket No. LND-CV-21-6143115-S, 2022 WL 1978683, *1 (March 30, 2022, *Berger, J.T.R.*). The application by 131 Beach for the proposed development of 131 Beach Rd. was submitted in two parts. "The first proposed a text amendment to create a new affordable housing use in a residential zone⁵ . . . and the second sought a site plan review and a certificate of zoning compliance for the proposed development. . . . [T]he commission voted to deny the application as to the text amendment and to approve with conditions the application as to the site plan and the certificate of zoning compliance. . . . The

⁴ General Statutes § 8-30g governs affordable housing appeals. "[T]he key purpose of § 8-30g is to encourage and facilitate the much needed development of affordable housing throughout the state." *Mackowski v. Planning & Zoning Commission*, 59 Conn. App. 608, 616, 757 A.2d 1162, cert. granted, 254 Conn. 949, 762 A.2d 902 (2000). Section 8-30g provides that on appeal, a municipal zoning commission bears the burden of proving that "(1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses; and (B) the development is not assisted housing." General Statutes § 8-30g (g).

⁵ The application for a text amendment is referred to herein as the "text amendment."

conditions restricted the height of the building, which in effect reduced the number of units, and required the Police Commission's approval for certain offsite parking reductions." (Footnote added.) Id. Upon the filing of appeals in both matters, which were consolidated, the Superior Court, *Berger, J.T.R.*, sustained the appeal of 131 Beach and denied that of the movants. Both the movants and the Commission appealed from the decision of the Superior Court. The appeals are currently before the Supreme Court.

During the pendency of the appeals, counsel for the movants, Joel Green, and co-counsel for 131 Beach, Russell Liskov, undertook settlement discussions. On May 17, 2023, Green e-mailed Liskov with a confirmation of the movants' acceptance of certain terms under discussion. The crux of the issue before the court is whether the May 17 e-mail was a clear and unambiguous recitation of an oral agreement of undisputed terms between the parties to settle both appeals. The movants claim it was, while 131 Beach is of the view that it was at most a status summary of some, but not all, elements of a settlement.

The court makes the following findings of fact.⁶ In the spring of 2023, Liskov, Green and Barbara Schellenberg, counsel for the Commission, engaged in settlement discussions. Liskov was informed by Schellenberg that her preference was that 131 Beach resolve its issues with the movants before she engaged in settlement discussions relative to the text amendment. The court credits Liskov's testimony that his client and the Commission required a global settlement of both the text amendment and the site plan appeals in order to effectuate a settlement with either party.

The record discloses that elements of a settlement between the movants and 131 Beach were agreed upon. Green issued an e-mail to Liskov on May 17, 2023, in which he detailed five

⁶The court received testimony from Liskov and Schellenberg as well as nineteen exhibits.

areas of agreement that included construction of nine units as shown on an attached site plan, the character and nature of the exterior finish of the buildings, double hung windows, permission to substitute brick for the exterior stonework at the movants' option after their review of plans and elevations and a six foot solid fence as well as the planting of "a robust landscape buffer." Exh.

6. The e-mail further provided that "[t]he settlement is contingent on my clients [the movants] *agreeing to a landscaping plan* for the rear and rear corner of the property along the properties of my clients including arbor vitae and other trees and plantings that substantially shield the view of the site from my clients' properties year round. If you are able to expedite and furnish a proposed landscaping plan, we can put this issue to rest easily and quickly. *Certainly, there will be other issues to be resolved* and worked through but, for the time being, kindly confirm *how you'd propose to proceed in advancing this settlement.*" (Emphasis added.) Id.

Following the May 17, 2023 e-mail from Green, Liskov replied to Green with the comment that he was waiting on his client's review of the terms contained in Green's earlier e-mail. Exh. 7. The client, Glenn Tatangelo, had another matter before the Commission relative to a multi-unit property on Westway Road in Fairfield, in which he had an interest. Specifically, Liskov was demanding that the Town "release" the requirement for two affordable units on Westway. Liskov testified that because the agreement with the movants involved fewer units than he had originally proposed, a resolution of the Westway Road appeal was required to make the deal more palatable. The court finds that the Westway Road appeal concession by the Commission was not raised by Liskov with Green, although it was raised with Schellenberg who indicated that it was a "non-starter." The nine townhouses addressed by the site plan settlement discussion did not include an affordable housing component. Finally, no agreement was reached, or even discussed, by the parties regarding the landscaping plan. The court credits Liskov's

testimony that any landscaping plan could involve other fencing, the types and sizes of trees and how far apart the trees were, which could potentially constitute an expenditure of hundreds of thousands of dollars.

“A trial court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous. . . . Agreements that end lawsuits are contracts, sometimes enforceable in a subsequent suit, but in many situations enforceable by entry of a judgment in the original suit. A court’s authority to enforce a settlement by entry of judgment in the underlying action is especially clear where the settlement is reported to the court during the course of a trial or other significant courtroom proceedings. . . . Summary enforcement is not only essential to the efficient use of judicial resources, but also preserves the integrity of settlement as a meaningful way to resolve legal disputes. When parties agree to settle a case, they are effectively contracting for the right to avoid a trial. . . . Nevertheless, the right to enforce summarily a settlement agreement is not unbounded. The key element with regard to [enforcing a] settlement agreement [is] . . . no factual dispute as to the terms of the accord. Generally, [a] trial court has the inherent power to enforce summarily a settlement agreement as a matter of law [only] when the terms of the agreement are clear and unambiguous . . . and when the parties do not dispute the terms of the agreement.” (Citations omitted; internal quotation marks omitted.) *Wheeler v. Beachcroft, LLC*, 210 Conn. App. 725, 736, 271 A.3d 141 (2022).

“A contract is not made so long as, in the contemplation of the parties, something remains to be done” (Internal quotation marks omitted.) *Squillante v. Capital Region Development Authority*, 208 Conn. App. 676, 688, 266 A.3d 940 (2021) “So long as any essential matters are left open for further consideration, the contract is not complete. . . . Where a

writing is no more than a statement of some of the essential features of a proposed contract and not a complete statement of all the essential terms, which terms require further development in an executed written contract, no enforceable agreement exists.” (Citations omitted; internal quotation marks omitted.) Id., 689. “Whether a term is essential turns on the particular circumstances of each case.” (Internal quotation marks omitted.) Id. “Clearly, an essential term is one without which a party would not have entered into an agreement.” Id. 690.

The court holds that the lack of an agreement as to the landscaping plan, which the court finds to be an essential term, renders incomplete, and thus unenforceable, any settlement agreement between 131 Beach and the movants. An e-mail from Green to Liskov on March 16, 2023, references a number of elements needed for an agreement, including “a robust landscape buffer *reasonably shielding the view from my client’s properties?*” (Emphasis added.) Exh. 1. This indicates the importance to the movants of an arrangement in which they may expect reasonable privacy. Although other elements of the “robust landscape” were agreed upon, to wit, a six foot solid fence along the entire rear of the property, Green conveys the importance of the landscaping to his clients by asserting that “[t]he settlement is contingent on my clients agreeing to a landscaping plan.” Exh. 6. The court finds that agreement on the landscaping plan is an essential term, the absence of which prevents the conclusion that the elements agreed upon were by themselves a complete and enforceable contract.⁷ The motion to enforce the purported settlement agreement is therefore denied.

⁷ Because the court concludes that the lack of an agreed upon landscaping plan compels the conclusion that there was no enforceable settlement agreement, the court need not discuss the implications of the inclusion of a Westway component as a prerequisite to a global settlement.

THE COURT

/s/ #435707
Cesar A. Noble
Judge, Superior Court