DOCKET NO. CV-18-6081068-S	:	STATE OF CONNECTICUT
ROBERT BURROUGHS	:	SUPERIOR COURT
V.	:	JUDICIAL DISTRICT OF NEW HAVEN
	:	AT NEW HAVEN
QUANETTE KIRBY, ET AL.	:	MAY 3, 2024

MEMORANDUM OF DECISION
MOTIONS FOR SUMMARY JUDGMENT (# 157 & #160)

STATEMENT OF FACTS AND PROCEDURAL HISTORY

The defendants, Quanette Kirby (Kirby) and RBQ Property Management, LLC (RBQ), move for summary judgment on the second, sixth, and seventh counts of the amended complaint filed by the plaintiff, Robert Burroughs. The second and sixth counts are against both defendants, sounding in quiet title/partition and equitable mortgage, respectively, and involve a dispute over the ownership of real property located at 45 Benham Street (Benham property) in Hamden; 402-404 Shelton Street (Shelton property) in New Haven; and 273-275 Lombard Street (Lombard property) in New Haven. The counts allege that the parties had either a written or an oral agreement (acquisition plan) to purchase these properties for RBQ, in which the plaintiff had a 50 percent interest. Though Kirby initially had sole title to the properties, she allegedly was obligated to transfer their titles to RBQ pursuant to the acquisition plan. Kirby purportedly never did so and continues to operate RBQ to the exclusion of the plaintiff.

The seventh count, which is against Kirby alone, sounds in breach of settlement agreement and involves a prior action; *Kirby* v. *Burroughs*, Superior Court, judicial district of New Haven, Docket No. CV-17-5038029-S; wherein Kirby sued Burroughs to recover on a personal loan. The parties signed release agreements to settle the action, and in the seventh count

the plaintiff claims that Kirby violated that release by making a civilian complaint (police letter) about plaintiff's behavior to plaintiff's employer, the Stratford police department, and to several news agencies.

On October 30, 2023 and November 2, 2023, the defendants filed two motions for summary judgment as to these counts on the grounds that the absence of a written acquisition plan violated the statute of frauds and the police letter did not violate the language of the release. They submitted evidence in the form of affidavits, the RBQ operating agreement, excerpts of interrogatories, the property management agreements with RBQ for the properties owned by both parties individually, partial court transcripts from the prior action, and a request for production.

On December 4, 2023, the plaintiff filed a memorandum in opposition, which included, among other exhibits, his affidavit, the articles of organization for RBQ naming the plaintiff as chief executive officer and Kirby as chief financial officer, text messages between Kirby and the plaintiff, a general release between the plaintiff and Kirby from the prior action, and the police letter. On December 18, 2023, the defendants filed a reply brief, and on January 8, 2024, the court heard oral argument on the motions.

LEGAL ANALYSIS

The Second Count

The defendants argue that pursuant to General Statutes § 52-550 (a) (4), the statute of

frauds bars the plaintiff's cause of action to quiet title under General Statutes § 47-31.[1] They contend that the statute of frauds requires a written agreement for an interest in real property, and the plaintiff only submits oral evidence of the alleged agreement for the three properties. They submit RBQ's operating agreement as evidence that the company was only engaged in property management, such as maintenance and cleaning, as opposed to the purchase of real estate. They also submit the property management agreements that were specific to the three properties. Moreover, the defendants claim that the plaintiff admitted in a previous prejudgment remedy hearing in *Kirby* v. *Burroughs*, Superior Court, judicial district of New Haven, Docket No. CV-17-5038029-S (April 27, 2017, *Ecker, J.*), that RBQ was only involved in managing those properties (maintenance, cleaning and lawn mowing) and that his name was not on the deeds. These prior admissions supposedly preclude the plaintiff from raising a genuine issue of material fact as to the purpose of RBQ.

In response, the plaintiff concedes that there is no explicit, written agreement to convey title to the properties to either RBQ or to the plaintiff directly. The plaintiff argues that RBQ was formed to purchase properties as well as manage them and that the operating agreement is ambiguous. In his affidavit, he states that the parties orally agreed that title to the properties would be transferred from Kirby to RBQ when Kirby deemed it advantageous for tax purposes. The plaintiff also provides a text message wherein Kirby states that she plans to purchase an additional $1.3 million in properties in 2017. According to the plaintiff, the consideration for this

[1]Section 47-31 provides in relevant part: "(a) An action may be brought by any person claiming title to, or any interest in, real or personal property . . . (b) The complaint in such action shall describe the property in question and state the plaintiff's claim, interest or title and the manner in which the plaintiff acquired the claim, interest or title."

oral agreement was the $18,000 he invested in RBQ when it was formed, as listed in attachment A to the agreement, and the time and effort he put into the company. Even in the absence of an oral agreement, the plaintiff contends that the same evidence – his $18,000 investment and his time – constitute part performance and equitable estoppel, which are exceptions to the statute of frauds.

A. Quiet Title Action

"All actions to determine record title of any interest in real property are governed by General Statutes § 47-31. . . . The statute requires that the complaint in such an action describe the property in question, state the plaintiff's claim, interest or title and the manner in which the plaintiff acquired the interest, title or claim, and it must also name the person or persons who may claim the adverse interest or estate." (Citation omitted.) *Koennicke* v. *Maiorano*, 43 Conn. App. 1, 9, 682 A.2d 1046 (1996).

"One obvious purpose of [§ 47-31] is to make certain that a plaintiff has, within the purview of the allegations of his complaint, not a mere groundless claim but an actual interest in the property sufficient to justify his instituting an action concerning it and asking the court to adjudicate his rights and those of the parties defendant. Unless a plaintiff has such an interest, he obviously has no right to maintain an action under the statute for the adjudication of any claims concerning the property." *Loewenberg* v. *Wallace*, 147 Conn. 689, 692, 166 A.2d 150 (1960). "[L]egal title is not required to invoke the provisions of § 47-31." *Castro* v. *Mortgage Lenders Network USA, Inc.*, 158 Conn. App. 371, 377, 119 A.3d 639 (2015).

B. The Sham Affidavit Rule

As a threshold issue, the defendants' claim that the plaintiff's prior testimony contradicts

and invalidates his affidavit will be addressed. "The 'sham affidavit' rule refers to the trial court practice of disregarding an offsetting affidavit in opposition to a motion for summary judgment that contradicts the affiant's prior deposition testimony. . . . It must be strongly emphasized that the sham affidavit rule is a narrowly circumscribed doctrine that is to be applied with care. . . . [M]any courts have determined that if the witness provides a reasonable explanation for the contradiction, such as confusion or discovery of new evidence, the sham affidavit rule should not apply." (Citations omitted.) *Kenneson* v. *Eggert*, 176 Conn. App. 296, 310, 170 A.3d 14 (2017). Connecticut appellate courts have yet to expressly adopt this rule. Id. Even in the absence of a sham affidavit, "[a]ny inconsistency may of course bear on the question of credibility . . . ." Id.

In the prior action, which involved the plaintiff's personal loan to Kirby, the plaintiff testified at a prejudgment remedy hearing that he had no interest in the RBQ properties: "All the assets that are in her name, I don't benefit from. She has three properties that RBQ is supposed to be just managing, cleaning, making sure maintenance, making sure the grass is cut. . . . [S]he has the loans in her name, and the properties in her name . . . ."

Even if the court were to adopt the sham affidavit rule, which it need not decide, the testimony provided in the partial transcript does not necessarily contradict the plaintiff's allegations regarding an oral agreement. The plaintiff's affidavit refers to an agreement to transfer title to the properties in the future, and the prior testimony could be construed as simply acknowledging the existing state of affairs rather than being a legal admission that there was no agreement to transfer. While the prior testimony may be admissible to challenge credibility, the affidavit may not be a sham, particularly given that the evidence is only a partial transcript where context may be missing.

C. Statute of Frauds and Part Performance

General Statutes § 52-550 (a) (4) provides in relevant part: "No civil action may be maintained in the following cases unless the agreement, or a memorandum of the agreement, is made in writing and signed by the party, or the agent of the party, to be charged. . . . upon any agreement for the sale of real property or any interest in or concerning real property." "The primary purpose of the statute of frauds is to provide reliable evidence of the existence and the terms of the contract, [and] the requirements of the statute can be met either by a single document or . . . by a series of related writings which, taken together, describe the essential terms and conditions of the contract. . . . The memorandum required by the statute is sufficient if it states the contract between the parties with such certainty that the essentials of the contract can be determined from the memorandum itself without the aid of parol proof, either by direct statement or by reference therein to some other writing or thing certain." *Electrical Wholesalers, Inc.* v. *M.J.B. Corp.*, 99 Conn. App. 294, 302, 912 A.2d 1117 (2007).

Equitable estoppel is an exception to the writing requirement of the statute of frauds, and the doctrine of part performance is essential to that exception. "When estoppel is applied to bar a party from asserting the statute of frauds . . . we also require that the party seeking to avoid the statute must demonstrate acts that constitute part performance of the contract. . . . In the context of the statute of frauds, therefore, we sometimes have referred to the application of estoppel as the doctrine of part performance . . . ." (Citations omitted; internal quotation marks omitted.) *Glazer* v. *Dress Barn, Inc.*, 274 Conn. 33, 60–62, 873 A.2d 929 (2005). "Indeed, [the Supreme Court's] review of cases since the mid-1800s reveals no instance in which [it] has concluded that a party was estopped from asserting the statute of frauds without evidence of part performance."

Id., 64.

"[T]he elements required for part performance are: (1) statements, acts or omissions that lead a party to act to his detriment in reliance on the contract; (2) knowledge or assent to the party's actions in reliance on the contract; and (3) acts that unmistakably point to the contract. . . . Under this test, two separate but related criteria are met that warrant precluding a party from asserting the statute of frauds. . . . First, part performance satisfies the evidentiary function of the statute of frauds by providing proof of the contract itself. . . . Second, the inducement of reliance on the oral agreement implicates the equitable principle underlying estoppel because repudiation of the contract by the other party would amount to the perpetration of a fraud." *SS-II, LLC* v. *Bridge Street Associates*, 293 Conn. 287, 295–96, 977 A.2d 189 (2009).

"Specifically, [t]he acts of part performance . . . must be such as are done by the party seeking to enforce the contract, in pursuance of the contract, and with the design of carrying the same into execution, and must also be done with the assent, express or implied, or knowledge of the other party, and be such acts as alter the relations of the parties. . . . The acts also must be of such a character that they can be naturally and reasonably accounted for in no other way than by the existence of some contract in relation to the subject matter in dispute . . . ." *SS-II, LLC* v. *Bridge Street Associates*., supra, 293 Conn. 295–96. "This doctrine is frequently loosely stated, and, it must be confessed, not infrequently invoked and applied in aid of a court in reaching what is believed to be an equitable result, without a clear comprehension of its limitations. It has very decided limitations, not apparent, perhaps, from its statement." *Verzier* v. *Convard*, 75 Conn. 1, 6, 52 A. 255 (1902).

"It is generally held that partial or even full payment of the purchase price for the sale of

land under an oral contract does not take the case out of the statute of frauds. . . . The reason usually given for this rule is that the purchaser normally may have restitution of the consideration paid so that his predicament does not warrant the application of an equitable doctrine designed to prevent the statute of frauds itself from becoming an engine of fraud. . . . The same reasoning would also apply to the payment of property taxes on the land in question, an act which alone has not usually been deemed sufficient to save an agreement from the effect of the statute. The construction of substantial improvements on the land by the purchaser, however, has been regarded as the strongest and most unequivocal act of part performance by which an oral contract to purchase land is taken out of the statute of frauds. . . . The making of valuable improvements alone in reliance on the vendor's promise has been deemed sufficient by many authorities to allow specific enforcement of the contract. . . . Our cases also have given the making of improvements a special significance as an act of part performance. . . . Usually the making of improvements has occurred in combination with possession, another significant circumstance. . . . Possession, however, is not a prerequisite, although it may be highly significant in establishing the reasonable reliance upon the oral contract which is essential. . . . The modern tendency is to deemphasize particular kinds of acts as formulae for the application of an equitable doctrine designed to relieve one who has reasonably relied upon a promise of another from a substantial detriment entailed by the change of position so induced." (Citations omitted; internal quotation marks omitted.) *Breen* v. *Phelps*, 186 Conn. 86, 94–96, 439 A.2d 1066 (1982).

Full or partial payment of the purchase price is insufficient, even if combined with acts of "a purely preliminary or collateral character, done by the plaintiff only in anticipation of the actual performance of a contract by both parties." *Santoro* v. *Mack*, 108 Conn. 683, 692, 145 A.

273 (1929). "[A]cts as measuring the land, making maps and surveys and plans for improvements and other acts prior or preliminary to the acquisition of title, have been held not to be acts of part performance." Id. In *Santoro*, the court held, inter alia, that acts such as placing a $100 deposit for the purchase of property, hiring of an electrician and an architect, and arranging for the later sale of the property were insufficient allegations.

Nevertheless, partial performance can be satisfied when the partial payment is accompanied by circumstances where the initial preparations were extensive, were done with the assent and knowledge of the defendant, and were explainable in no other way than by the existence of an oral contract. *Harley* v. *Indian Spring Land Co.*, 123 Conn. App. 800, 3 A.3d 992 (2010). In *Harley*, the parties already had entered into a written purchase and sale agreement for land with a $10,000 deposit. Id., 804. The *Harley* plaintiff obtained an oral extension of the agreement from the defendant company so that he could correct an architectural design problem. Id., 806–07. The plaintiff hired an architect, who redesigned the proposed home and billed the plaintiff for 157 hours of work. Id., 807. His plans required approval from the defendant's design review board, and the plaintiff submitted them. Id., 808. The defendant claimed that the board did not receive the plaintiff's design and demanded that the plaintiff pay more for the land than had been previously agreed. Id., 809. The *Harley* court upheld that trial court's conclusion that the plaintiff's acts were part performance of an oral modification of the written agreement, noting that the plans were "specifically aimed" at the land in question, that the defendant had knowledge of and assented to the plaintiff's redesign efforts, and that they could not be explained without the existence of an oral modification. Id., 829-30.

In the present action, there is no writing or series of writings that complies with the

statute of frauds. At oral argument, the plaintiff conceded that there was no explicit written agreement. Further, no agreement can be inferred from the writings submitted as evidence. The RBQ operating agreement explicitly provides for the management of properties and make no reference to the purchase of any properties. The individual property management agreements between RBQ and Kirby for the three properties explicitly provide for decoration, repair, and maintenance and make no reference to their purchase. Finally, the text messages only mention Kirby's future plans to purchase $1.3 million in properties and do not support an inference of a prior agreement for RBQ to acquire title to the three properties.

In terms of part performance of an oral contract, there is no evidence of the typical indicia of part performance: the plaintiff never possessed the properties nor made substantial improvements to them. The only evidence to support part performance is the $18,000 investment in RBQ and the plaintiff's text message reference to the "time I invested" in RBQ. Even if a jury would find that all $18,000 was attributable to the purchase of the three properties, payment alone cannot satisfy partial performance.

Apart from that payment, the only evidence is a vague reference to his time invested in the company. But there is no evidence of how he invested that time, and critically, there is no evidence of any acts he performed that explicitly involved the three properties. Even preliminary acts aimed at acquiring property are insufficient, and here we have no acts whatsoever, much less circumstances like *Harley* where the acts only could be explained by the existence of an oral contract. It is undisputed that the parties formed RBQ at least for the purpose of managing properties, so that is an alternative explanation for both his investment in RBQ and whatever time he spent on the company. The motion for summary judgment is therefore granted as to the

second count on the grounds that the plaintiff's action sounding in quiet title is barred by the statute of frauds.

The Sixth Count

The defendants also move for summary judgment on the equitable mortgage claim on the ground that there is no written mortgage agreement to satisfy the statute of frauds. Like the second count, the plaintiff counters that the business records and correspondence between the parties constitute a sufficient writing. He also argues that a written agreement is unnecessary for an equitable mortgage and that there was sufficient evidence of an oral agreement and evidence of a debt. Specifically, the parties allegedly orally agreed that Kirby would transfer the subject properties, which were in her name, to RBQ when Kirby deemed it most advantageous for tax purposes. Regarding his debt, the plaintiff references the $18,000 he invested in RBQ as shown in attachment A to the RBQ agreement, and his texts to Kirby, in which he notes the time he invested in the company.

The defendants respond that the plaintiff can fulfill none of the elements for an equitable mortgage. On the writing issue, they respond, inter alia, that the RBQ agreement states that it was only a property management company and is silent on property acquisition. Also, they contend that the plaintiff submitted no evidence, either written or oral, to demonstrate that he invested in RBQ in exchange for a mortgage on the properties.

The statute of frauds is inapplicable to a claim of equitable mortgage, which may be proven by parol evidence. "The best explanation for the [s]tatute's inapplicability is simply that it is not violated by a judicial determination that an absolute deed is a mortgage. Such a finding does not create in or transfer to the grantor an interest in land; rather, the parol evidence simply

establishes that the grantor never parted with ownership in the land. On its face, the [statute] merely requires a writing; it does not preclude oral testimony to explain or supplement the writing." Restatement (Third), Property, Mortgages § 3.2, comment (d), p. 118 (1996). Connecticut follows this reasoning: "[E]xtrinsic parol evidence, when requisite, is admissible to apply the terms of a written instrument to a particular subject matter, but in perfect consistency with it. This is not to vary or contradict, but to give its intended effect to the contract." *Reading* v. *Weston*, 8 Conn. 117, 121 (1830).

Consequently, Connecticut courts have considered oral testimony in adjudicating equitable mortgage claims. *Franchi* v. *Farmholme, Inc.*, 191 Conn. 201, 214–17, 464 A.2d 35 (1983) (upholding trial court's decision that transaction was not equitable mortgage based on credibility of witnesses); *Arvee Construction Co.* v. *Ardolino*, 144 Conn. 7, 11–12, 127 A.2d 39 (1956) (upholding trial court's finding that transaction was not equitable mortgage).

The elements for an equitable mortgage have been variously stated. "Either, [s]uch a mortgage may arise by (1) an attempt to create a mortgage, though imperfectly executed; (2) by an agreement to charge described property as security for money advanced; and (3) where the plaintiff advanced the sum of money to the defendant on the condition that the defendant would execute and deliver a mortgage and [the] defendant failed to do so. . . . Or, an equitable mortgage may arise by: (1) the existence of a definite debt, obligation or other liability to be secured by the property in question; (2) that the mortgagor had the legal power (i.e. legal title to the property) to execute a mortgage on the property; and (3) that the parties intended at the time of the transaction to create a mortgage, lien or a charge on property specifically described or identified to secure an obligation." (Citations omitted; internal quotation marks omitted.) *Bank of America, N.A.* v.

Murillo, Superior Court, judicial district of Fairfield, Docket No. CV-17-6062587-S (October 2, 2019, *Spader, J.*).

Regardless, "the essential fact given rise in equity to what is called an equitable mortgage is the lending of money or giving of credit in reliance upon the agreement that the property involved be security for such loan or debt." (Internal quotation marks omitted.) *Nelson* v. *Catalano*, Superior Court, judicial district of Hartford, Docket No. CV-03-0824431-S (April 3, 2007, *Satter, J.*). "The controlling consideration in determining whether a transaction is a sale or a mortgage is the intention of the parties, ascertained in view of all the circumstances, as to the purpose which the transaction is to effectuate. . . . Intention is an inference of fact." (Citations omitted; internal quotation marks omitted.) *Franchi* v. *Farmholme, Inc.*, supra, 191 Conn. 216–17. "A conveyance of real . . . property may properly be held to be a mortgage, notwithstanding that . . . the person receiving it expressed at the time his unwillingness to accept a mortgage." *Williams* v. *Chadwick*, 74 Conn. 252, 255, 50 A. 720 (1901).

The statute of frauds is inapplicable to an equitable mortgage claim and a writing is not required, but nevertheless, for the same reasons stated for the second count, there is no writing memorializing a mortgage. Also, the plaintiff conceded at oral argument that there was no evidence of an explicit creation of a mortgage. The plaintiff's theory is that his money invested in the properties and his time spent for the corporation, represented a debt and that Kirby agreed and had the power to transfer title to RBQ to secure his interest.

Even assuming the plaintiff's characterization of the evidence is correct, it cannot be inferred that the parties intended the properties to be security for a debt. It is not a typical mortgage where the mortgagor transfers an interest in the property to the mortgagee to secure a

debt. Here, neither of the parties owned the property at the time of the transaction. Kirby did not have title to the properties when the plaintiff gave her the money, nor did she transfer any interest in the property to him or RBQ when she purchased it. Purportedly, the parties deliberately avoided giving him an interest at the time of purchase. Properties cannot be considered "security" for a debt if they might only be transferred to the lender at some unknown time in the future.

The sole inference is that the plaintiff gave Kirby money to be a joint purchaser of the properties through the corporation. The plaintiff's text message to Kirby clarifies that he did not want a mere refund of his debt and never intended the transaction to be a mortgage: "I invested as 50/50 partnership on RBQ and the three properties purchased. I will not [accept] a credit of any kind. I want to be treated as a partner . . . ." Though an equitable mortgage can exist even when the parties expressly disclaim one; *Williams* v. *Chadwick*, supra, 74 Conn. 255; no interest in the properties was conveyed to him when he provided the money and there is no other evidence supporting the inference of a mortgage.

The case is distinguishable from *Murillo*, where the defendant and his wife were both named on the title to the property, but only the wife signed the mortgage with the plaintiff bank due to the defendant's credit issues. *Bank of America, N.A.* v. *Murillo*, supra, Superior Court, Docket No. CV-17-6062587-S. The *Murillo* court held there to be an equitable mortgage as to the defendant's interest in the property because (1) he was named on the title to the property; (2) he helped prepare the wife's mortgage paperwork; and (3) he was actively trying to modify the mortgage because he was living at the property following a divorce. Id.

Here, the dispute is not between a joint purchaser of a property and a bank holding a mortgage, but between the joint purchasers themselves. The only mortgage that might exist is

between Kirby and a bank. Unlike the *Murillo* defendant, the plaintiff was not placed on the title to the property to secure any money he gave Kirby, nor is he trying to modify or assume any mortgage that Kirby may have. Consequently, even assuming the evidence is resolved in the plaintiff's favor, there is no inference that the properties were intended as security for a loan or debt. Therefore, the motion for summary judgment is granted as to the sixth count.

The Seventh Count

Kirby moves for summary judgment as to the breach of the release agreement on the ground that the release contains no language that forbade her from filing a police letter with the Stratford Police Department (department).[2] She argues that the release does not contain a nondisclosure or nondisparagement clause, nor was there an oral agreement to that effect. Even if it could be so interpreted, she claims that the release was not operative because, at the time she filed the complaint, the plaintiff had not tendered his consideration for the release.

The plaintiff responds that the police letter repeats the allegations that were the subject of the release and that a genuine issue of material fact in dispute exists. He counters that the timing of when the consideration was paid was irrelevant, particularly because Kirby, at the time, was petitioning the court to enforce the release agreement.

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[2]Civil complaints to police departments are authorized by statute. General Statutes § 7-294bb (c) provides in relevant part: "[E]ach law enforcement agency shall . . . adopt the policy implemented by said council or develop and implement an alternative policy . . . Upon adoption of the policy . . . each law enforcemenet agency shall make its policy available to the public . . . ." Pursuant to Section 7-294bb (c), the department adopted and implemented its citizen complaint procedure and made its policy available on the department's internet website. See Stratford Police Department, "Citizen Complaint Procedure," available at https://www.stratfordctpd.com/Docs/CitizenComplaintProcedure.pdf (last visited April 22, 2024).

"In Connecticut, a release represents a surrender of the plaintiff's cause of action against the settling tortfeasor." *Ramsay* v. *Camrac, Inc.*, 96 Conn. App. 190, 200, 899 A.2d 727, cert. denied, 280 Conn. 910, 908 A.2d 538 (2006). "It is well settled that a release, being a contract whereby a party abandons a claim to a person against whom that claim exists, is subject to rules governing the construction of contracts. . . . 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. . . . Although ordinarily the question of contract interpretation, being a question of the parties' intent is a question of fact . . . [w]here there is definitive contract language, the determination of what the parties intended by their contractual commitments is a question of law. . . . 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.) *Dunn* v. *Etzel*, 166 Conn. App. 386, 392–93, 141 A.3d 990 (2016). "[T]he language used must be accorded its common, natural, and ordinary meaning and usage where it can be sensibly applied to the subject matter of the contract." *Tallmadge Bros., Inc.* v. *Iroquois*

Gas Transmission System, L.P., 252 Conn. 479, 498, 746 A.2d 1277 (2000).

"Demand" and "claim" are among the terms used in the release. "In the common parlance of a layman, a 'demand' is a forceful statement in which [one] say[s] that something must be done [for] or given to that person. . . . Other common definitions of 'demand' include 'to ask for with proper authority; claim as a right,' and 'to inquire or ask for peremptorily or urgently.'" (Citations omitted.) *Tucker* v. *American International Group, Inc.*, United States District Court, Docket No. 3:09CV1499 (CSH) (D. Conn. January 28, 2015) (language in insurance policy). "At law, a 'demand' is defined as '[t]he assertion of a legal or procedural right.' Black's Law Dictionary [9th Ed. 2009]. Moreover, a 'demand letter' is '[a] letter by which one party explains its legal position in a dispute and requests that the recipient take some action (such as paying money owed), or else risk being sued.'" Id., n.18.

"In an earlier case [our Supreme Court] wrote that the term '[c]laim' in its primary meaning is used to indicate the assertion of an existing right. . . .Today, 'claim' is commonly defined as '[a] demand for something as one's rightful due . . . [a] basis for demanding something; title or right;' American Heritage Dictionary (2d College Ed. 1985); and '[d]emand for money or property.' Black's Law Dictionary (5th Ed. 1979)." (Citation omitted.) *Board of Education* v. *Freedom of Information Commission*, 217 Conn. 153, 160, 585 A.2d 82 (1991) (language in FOIA statute). "Without fully defining the outer limits of what constitutes a claim, our Supreme Court has held that a claim falls short of what is required for a law suit. . . . Black's Law Dictionary defines a claim as '1. The aggregate of operative facts giving rise to a right enforceable in court . . . 2. The assertion of an existing right; any right to payment or to an equitable remedy, even if contingent or provisional . . . 3. A demand for money, property, or a

legal remedy to which one asserts a right . . .' Black's Law Dictionary [9th Ed. 2009]." (Citation omitted.) *O & G Industries, Inc.* v. *Litchfield Ins. Group, Inc.*, Superior Court, judicial district of Litchfield, Docket No. CV-12-6006448-S, (May 15, 2015, Pickard, J.) (60 Conn. L. Rptr. 488, 491) (language in insurance policy).

The parties do not dispute that they agreed to the release at some point and they do not dispute the language of the release that is material to the outcome of this motion. Therefore, the issue is whether, as a matter of law, Kirby violated release terms by filing the police letter. The release signed by Kirby in October 2018 states in relevant part that she "remised, released and forever discharged . . . the said Releasees . . . of and from any and all manner of action and actions, cause and causes of action, suits, damages, judgments, executions, claims for personal injuries, property damage, and demands whatsoever, in law or in equity, which I ever had, now have, or which my heirs . . . can, shall, or may have against the Releasees, for, upon or by reason of, any matter, cause or thing whatsoever, from the beginning of the world to date of these presents, and particularly, but without in any matter limiting the foregoing, for and on account of any and all claims related to personal loans from Releasor to Releasee, from February 2013 until March 2016, which was the subject matter of a lawsuit known as Quanette Kirby v. Robert Burroughs . . . ."[3]

The parties also do not dispute the contents of the police letter, which was attached as an exhibit. In the police letter, Kirby informed the department that the plaintiff's conduct at the

[3]The version the defendant signed in 2017 had an additional phrase at the end of the quote stating "excepting therefrom any liability the Releasor may claim against the Releasee for damages which may arise from the parties interaction in and with . . . RBQ Property Management Company, LLC, as may be amended or modified." This language is immaterial to the outcome of the motion.

prior proceeding could be considered unbecoming of a law enforcement officer. Kirby complained that the plaintiff was "ignoble, untrustworthy and untruthful under oath while on the witness stand," and by this conduct failed to uphold the code of conduct of the department. Kirby stated that the conduct of the plaintiff "goes against the grain, fine morals, conduct and attributes of a law enforcement officer." Further, Kirby requested that her complaint result in "appropriate disciplinary action" and a "formal investigation."

The filing of the police letter did not fall within the scope of Kirby's general release. Broadly, the purpose of a release agreement is a surrender of a cause of action; *Ramsay* v. *Camrac, Inc.*, supra, 96 Conn. App. 200; and the police letter cannot be construed as a filing of a legal or equitable cause of action for which Kirby would receive damages or other relief. At best, there might be employment consequences for the plaintiff, but Kirby would not benefit directly from them.

The language used in the general release does not support a different interpretation. The various definitions provided of general terms such as a "claim" and "demand" largely construe them as legal actions that one asserts personally against the other party and not an indirect complaint aimed at protecting the general public. The police letter in question did not seek a remedy that directly benefited Kirby. Also, as Kirby argues, there is no language in the release that can be interpreted as a nondisclosure agreement or a nondisparagement clause. Because the general release cannot be construed as including the defendant's police letter, Kirby's motion for summary judgment is granted as to the seventh count. The court does not need to reach the alternative argument that the release was not binding when Kirby filed the police letter.

CONCLUSION

For the foregoing reasons, the motions for summary judgment are granted as to the second, sixth, and seventh count.

Juris No. 421279
Wilson, J.