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RONALD J. VANCE ET AL. *v.* KENNETH P.  
TASSMER ET AL.  
(SC 18807)

Rogers, C. J., and Norcott, Palmer, Zarella and Eveleigh, Js.\*

Argued December 5, 2012—officially released January 29, 2013

*Hugh D. Hughes*, with whom, on the brief, was *William F. Gallagher*, for the appellants (defendants).

*Vincent T. McManus, Jr.*, for the appellees (plaintiffs).

*Opinion*

PER CURIAM. The plaintiffs, Ronald J. Vance and Carol P. Vance, brought this action against the defendants, Kenneth P. Tassmer and Richard W. Perillo, seeking a declaratory judgment that, under the doctrine of adverse possession, the plaintiffs were the owners of a certain parcel of land located at the northwest corner of their property at 131 Cook Hill Road in Wallingford, which borders the defendants' property. The parties ultimately reached a settlement agreement that provided for a new boundary line between their properties. Because the new boundary line left the defendants' property with slightly less than the minimum frontage requirement, the agreement also provided that the defendants would apply for and pursue a variance from the zoning board of appeals of the town of Wallingford (board). If the board failed to approve the application, the case would proceed to trial. The defendants filed a motion to open the settlement agreement alleging that they had signed the agreement under duress and that the plaintiffs had violated the agreement on several occasions. The defendants also filed an application for a variance, but then withdrew it. The plaintiffs in turn filed a motion to enforce the settlement agreement, which the trial court granted. The defendants appealed from that decision to the Appellate Court, which dismissed the appeal for lack of a final judgment because "it remained to be decided by the board whether to grant the variance." (Internal quotation marks omitted.) *Vance v. Tassmer*, 128 Conn. App. 101, 106, 16 A.3d 782 (2011).

Subsequently, the trial court granted the plaintiffs' motion to reconvene the hearing on their motion to enforce the parties' settlement agreement, and Tassmer filed a second application for a variance with the board in which he acknowledged that the denial of the application would result in no hardship. *Id.* At the plaintiffs' urging, the trial court ordered the defendants to amend the application to reflect that both defendants owned the property since the application did not name Perillo as one of the owners, and to indicate that the application was being filed pursuant to a court order. *Id.*, 107. At a hearing on the amended variance application, Perillo again told the board that the denial of the variance would not cause a hardship and that the defendants wanted to proceed to a trial on the quiet title action. *Id.*, 115–16. The trial court then held another hearing on the motion to enforce the settlement agreement, at which the plaintiffs claimed that the defendants had waived their right to pursue a variance and that the trial court should enter an order conveying the disputed property to the plaintiffs. *Id.*, 108. The trial court granted the motion and conveyed the property to the plaintiffs; *id.*, 109; and the defendants appealed from the ruling to the Appellate Court. *Id.*, 103.

The Appellate Court agreed with the trial court that the defendants had waived their right to enforce the provision of the settlement agreement allowing them to go to trial if the board failed to approve their application for a variance, but concluded that the trial court improperly had ordered the property to be conveyed to the plaintiffs when other provisions of the settlement agreement had not yet been satisfied. *Id.*, 118. Accordingly, the Appellate Court reversed the judgment in part and remanded the case to the trial court “with direction to render a judgment of adverse possession in favor of the plaintiffs contingent on the parties’ compliance with the terms of the settlement agreement, except for the variance contingency.” *Id.*, 119. We then granted the defendants’ petition for certification to appeal to this court, limited to the following issue: “Did the Appellate Court properly affirm the trial court’s granting of the plaintiffs’ motion to enforce the settlement agreement?” *Vance v. Tassmer*, 301 Conn. 925, 22 A.3d 1278 (2011).

After examining the entire record on appeal and considering the briefs and oral arguments of the parties, we have determined that the appeal in this case should be dismissed on the ground that certification was improvidently granted.

The appeal is dismissed.

\* This case originally was scheduled to be argued before a panel of this court consisting of Chief Justice Rogers and Justices Norcott, Palmer, Zarella and Eveleigh. Although Chief Justice Rogers was not present when the case was argued before the court, she read the record and briefs and listened to a recording of oral argument prior to participating in this decision.

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