STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: July 18, 2013)

CLIFTON PAYNE	:	
	:	
v.	:	
	:	**C.A. No. WC-2012-0449**
TOWN OF NEW SHOREHAM, TOWN OF NEW SHOREHAM ZONING BOARD OF REVIEW, TOWN OF NEW SHOREHAM PLANNING BOARD, CAROLE PAYNE, and PAYNE'S 1614 REALTY, LLC	:	

DECISION

STERN, J. This matter is presently before this Court on Plaintiff Clifton Payne's (Plaintiff) Motion for Summary Judgment pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure. In his underlying Complaint, Plaintiff seeks declaratory and injunctive relief against both Defendant Town of New Shoreham (the Town) and Defendant Carole Payne (Carole) and her company, Defendant Payne's 1614 Realty, LLC (Payne's 1614 Realty), relative to actions taken and decisions made allegedly affecting his jointly owned property in the Town. In response to Plaintiff's motion, the Town moved to dismiss the claim against it pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure for lack of standing. Arguments were heard before this Court on June 3, 2013 in Providence County. For the reasons set forth in this Decision, this Court grants the Town's Motion to Dismiss and, therefore, does not engage in an analysis of Plaintiff's motion against the Town; however, this Court denies Plaintiff's Motion for Summary Judgment against Carole and Payne's 1614 Realty, pending the resolution of certain disputes of material fact.

I

Facts and Travel

Plaintiff and his sister, Carole, own plat 5, Lot 110 in the Town as co-tenants. This lot has a well and pumping system that supplies water to Plaintiff's marina, known as Payne's Dock. The parties' interests in Lot 110 are restricted by an Agreement to Restrict Development Rights (the Agreement). The Agreement restricts the use of Lot 110 from any development "other than for the placement of other wells on the lot, and structures and equipment in order to assure the quality of the water from [present and future] wells on the lot." Plaintiff now alleges that Carole has violated the Agreement by allowing wedding tents, automobile parking, and other equipment to be placed on Lot 110.

Carole also owns an abutting property (plat 5, Lot 111) on which her company, Payne's 1614 Realty, operates Payne's Harborview Inn. In order to operate this facility, Carole was required to seek a special use permit from the Town. This special use permit was approved by the Town's Zoning Board of Review (the Zoning Board) in October 2010. No appeal was taken from the Zoning Board's decision and the proposed plan was sent to the Town's Planning Board to conduct a "Development Plan Review." The Planning Board issued a decision in June 2011, approving landscaping and exterior changes to Lot 111, which included the placement of a row of boulders along Lot 111's common boundary with Lot 110.

In early 2012, Carole requested that the Planning Board modify its June 2011 decision in order to allow for removal of the row of boulders provided for in the original plan. This modification was granted over Plaintiff's objection. The modified decision allowed Carole "to remove the boulders and instead install fences, boulders, or other obstructions to prevent vehicles from driving within 20 feet of the wells on Lots 111 and 110." Plaintiff attempted to have this

decision set aside by the Zoning Board; however, the Zoning Board allegedly stated that it did not have the legal authority to act on this request because it was neither an application for a variance or special use permit nor an appeal. Following the Zoning Board's refusal to set aside the Planning Board's decision, Plaintiff filed the underlying Complaint, which seeks for this Court to: (1) declare the Planning Board's decision void; (2) declare the Town's zoning ordinance void to the extent that it permits more than advisory opinions from the Planning Board; and (3) enjoin Carole from using Lot 110 in any manner that is inconsistent with the Agreement.

Plaintiff moved for summary judgment pursuant to Rule 56 of the Rhode Island Superior Court Rules of Civil Procedure against all named defendants.[1] Carole and Payne's 1614 Realty filed an objection to Plaintiff's Motion for Summary Judgment on November 8, 2012. The Town similarly filed an objection on September 4, 2012, and moved to dismiss Plaintiff's claim pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure. Plaintiff filed an objection to the Town's 12(b)(6) motion on October 22, 2012. Those motions were scheduled to be heard on January 22, 2013 on the monthly motion calendar in Washington County; however, the motions were passed from the calendar and a hearing was subsequently scheduled for those motions on June 3, 2013 in Providence County. Plaintiff then filed a supplemental memorandum in support of his motion and in objection to the Town's Motion to Dismiss, relying on a decision issued by another Justice of this Court in Whalerock v. Town of Charlestown et al., C.A. Nos. WC-2012-0709, WC-2012-0713, WC-2012-0760, 2013 WL 1562604 (Super. Ct. Apr. 10, 2013).

[1] Plaintiff's original Motion for Summary Judgment, which was filed on August 15, 2012, was against only the Town. However, Plaintiff filed an Amended Motion for Summary Judgment on August 31, 2012 seeking summary judgment against all defendants.

II

The Town's Motion to Dismiss

A

Standard of Review

In ruling on a motion to dismiss pursuant to Rule 12(b)(6) of the Rhode Island Superior Court Rules of Civil Procedure, the Court looks to the allegations in the Complaint in the light most favorable to Plaintiff and assumes them to be true. Palazzo v. Alves, 944 A.2d 144, 149 (R.I. 2008) (citing Ellis v. R.I. Pub. Transit Auth., 586 A.2d 1055, 1057 (R.I. 1991)). "'[T]he sole function of a motion to dismiss is to test the sufficiency of the complaint'" and review is, therefore, confined to the four corners of that pleading. Id. (quoting R.I. Affiliate, ACLU, Inc. v. Bernasconi, 557 A.2d 1232, 1232 (R.I. 1989)). "The grant of a Rule 12(b)(6) motion to dismiss is appropriate 'when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief from the defendant under any set of facts that could be proven in support of the plaintiff's claim.'" Palazzo, 944 A.2d at 149-50 (quoting Ellis, 586 A.2d at 1057).

B

Analysis

The Town has filed the instant Motion to Dismiss, arguing that Plaintiff does not have standing to bring the present claim. In support of this argument, the Town notes that the relevant municipal decisions were in regards to special use permit applications for Lot 111, over which it is undisputed that Plaintiff has no ownership interest. For this reason, the Town argues that Plaintiff has suffered no harm.

The Uniform Declaratory Judgments Act, codified at G.L. 1956 §§ 9-30-1 et seq., gives this Court the "power to declare rights, status, and other legal relations whether or not further

relief is or could be claimed." Sec. 9-30-1. "The decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary." Sullivan v. Chafee, 703 A.2d 748, 751 (R.I. 1997) (quoting Woonsocket Teachers' Guild Local Union 951, AFT v. Woonsocket Sch. Comm., 694 A.2d 727, 729 (R.I. 1997)) (internal quotations omitted). However, if granted, "[t]he declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree." Sec. 9-30-1.

Our Supreme Court has noted that "[f]or a claim [under the UDJA] to be justiciable, two elemental components must be present: (1) a plaintiff with the requisite standing and (2) 'some legal hypothesis which will entitle the plaintiff to real and articulable relief.'" N & M Props., LLC v. Town of W. Warwick ex rel. Moore, 964 A.2d 1141, 1145 (R.I. 2009) (quoting Bowen v. Mollis, 945 A.2d 314, 317 (R.I. 2008)). Thus, "[w]hen confronted with a request for declaratory relief, the first order of business for the trial justice is to determine whether a party has standing to sue. A standing inquiry focuses on the party who is advancing the claim rather than on the issue the party seeks to have adjudicated." Bowen, 945 A.2d at 317 (R.I. 2008). "Indeed, the party seeking relief must have alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." Id. (internal quotations omitted).

"The requisite standing to prosecute a claim for relief exists when the plaintiff has alleged that 'the challenged action has caused him injury in fact, economic or otherwise[.]'" Id. (citing R.I. Ophthalmological Soc'y v. Cannon, 113 R.I. 16, 22, 317 A.2d 124, 128 (1974) (quoting Ass'n of Data Processing Serv. Orgs., Inc. v. Camp, 397 U.S. 150, 152 (1970)). "This legally cognizable and protectable interest must be 'concrete and particularized . . . and . . . actual or

imminent, not 'conjectural' or 'hypothetical.'" Id. (quoting Pontbriand v. Sundlun, 699 A.2d 856, 862 (R.I. 1997) (quoting Lujan v. Defenders of Wildlife, 504 U.S. 555, 560 (1992)). Therefore, "[w]hen called upon to decide the issue of standing, a trial justice must determine whether, if the allegations are proven, the plaintiff has sustained an injury and has alleged a personal stake in the outcome of the litigation before the party may assert the claims of the public." Id. (citing Burns v. Sundlun, 617 A.2d 114, 116 (R.I. 1992)).

Stated differently, "'[w]here a concrete issue is present and there is a definite assertion of legal rights coupled with a claim of a positive legal duty with respect thereto which shall be denied by adverse party, then there is a justiciable controversy calling for the invocation of the declaratory judgment action.'" N & M Props., LLC, 964 A.2d at 1145 (quoting 1 Anderson, Actions for Declaratory Judgments § 14 at 62 (2d ed. 1951)). However, "[i]f the court determines that there is no justiciable controversy, 'the court can go no further, and its immediate duty is to dismiss the action * * *.'" Id. (quoting 1 Anderson, Actions for Declaratory Judgments § 9 at 49-50).

In this case, there is no indication that Plaintiff currently suffers—or will suffer in the future—any "injury in fact, economic or otherwise." Bowen, 945 A.2d at 317 (citing R.I. Ophthalmological Soc'y, 113 R.I. at 22, 317 A.2d at 128 (quoting Ass'n of Data Processing Serv. Orgs., Inc., 397 U.S. at 152). Indeed, the application before the Zoning Board and the Planning Board only pertained to Lot 111, which is owned by Carole. Plaintiff argues that the decision is invalid insofar as it "purports to allow Carole Payne to carry on activities on lot 110 that are specifically proscribed by the terms of the agreement." Am. Compl. ¶ 19. However, the decision merely states that the Planning Board would allow Carole "to remove the boulders and instead install fences, boulders, or other obstructions to prevent vehicles from driving within 20

feet of the wells on Lots 111 and 110." While that language does reference the well located on Lot 110, the plain meaning of that decision does not give Carole free license to do what she pleases on Lot 110. In fact, it does not permit her to take any action on Lot 110 that is not otherwise approved by Plaintiff. Indeed, the Planning Board would be completely without the authority to make such a decision as Lot 110 was completely outside the scope of the application that came before it.

The Town recognizes this to be true. See Hr'g Tr. 5:17-19 June 3, 2013 (noting that "the planning board has never made any decision that addresses activity on lot 110"). Furthermore, the Town notes that, even if the decision of the Planning Board is found to be unlawful, "it wouldn't change anything" because the actual basis of this dispute is the Agreement between Plaintiff and Carole. See id. at 7:3-13. Thus, to the extent that Plaintiff alleges that Carole has taken actions on Lot 110 without his permission, his remedy lies against Carole and not the Town. As such, a ruling in Plaintiff's favor against the Town would still be unlikely to "entitle the plaintiff to real and articulable relief" unless and until he should receive a ruling in his favor against Carole and Payne 1614 Realty for their actions relative to Lot 110. See N & M Props., LLC, 964 A.2d at 1145 (internal quotations omitted).

As such, it is the opinion of this Court that Plaintiff is without the requisite standing to pursue its claims against the Town because he has suffered no "injury in fact, economic or otherwise." Bowen, 945 A.2d at 317 (citing R.I. Ophthalmological Soc'y, 113 R.I. at 22, 317 A.2d at 128 (quoting Ass'n of Data Processing Serv. Orgs., Inc., 397 U.S. at 152). Similarly, there is no indication that Plaintiff would be entitled to "real and articulable" relief relative to Lot 110. See N & M Props., LLC, 964 A.2d at 1145 (internal quotations omitted). For these reasons, Plaintiff's claims against the Town are not justiciable and must be dismissed. See id. at

1145 (quoting 1 Anderson, Actions for Declaratory Judgments § 9 at 49-50 (2d ed. 1951)) (noting that "[i]f the court determines that there is no justiciable controversy, 'the court can go no further, and its immediate duty is to dismiss the action'"). For this reason, this Court grants the Town's Motion to Dismiss.[2]

III

Plaintiff's Motion for Summary Judgment

A

Standard of Review

Summary judgment is appropriate if, after reviewing the evidence in favor of the non-moving party, there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. See Lucier v. Impact Recreation, Ltd., 864 A.2d 635, 638 (R.I. 2005) (citing DiBattista v. State, 808 A.2d 1081, 1085 (R.I. 2002)) (other citation omitted). A party opposing a motion for summary judgment "'has the burden of proving by competent evidence the existence of a disputed issue of material fact and cannot rest upon mere allegations or denials in the pleadings, mere conclusions or mere legal opinions.'" Id. (quoting D'Allesandro v. Tarro, 842 A.2d 1063, 1065 (R.I. 2004)).

B

Town Ordinance and Planning Board Decision

In his Amended Complaint, Plaintiff seeks a declaration that the Town's Zoning Ordinance Art. 7 § 704(A) is void insofar as it contradicts the language found in Sec.

[2] As previously noted, this is an action for declaratory and injunctive relief and not an appeal from the decision of the Zoning Board. As an abutting landowner, Plaintiff almost certainly would have been an "aggrieved party," as defined in Sec. 45-24-27(4), with the requisite standing to appeal the Zoning Board's October 2010 decision. However, no such appeal was taken and this Court is bound in this matter to use the rules of standing that apply to actions instituted under the Uniform Declaratory Judgments Act.

45-24-49(a) of the Rhode Island General Laws. Plaintiff alleges that he has been harmed by this discrepancy insofar as the April 2012 decision of the Planning Board "purports to allow Carole Payne to carry on activities on lot 110 that are specifically proscribed by the terms of the agreement." Am. Compl. ¶ 19. However, as discussed in a preceding section of this Decision, this Court disagrees with Plaintiff's characterization of the Planning Board's decision. As such, Plaintiff does not have standing to challenge either the Planning Board's decision or the validity of the ordinance itself because he has not suffered any "injury in fact, economic or otherwise." Bowen, 945 A.2d at 317 (citation omitted). Having determined that this Court must dismiss Plaintiff's claims against the Town, this Court need not engage in an analysis of Plaintiff's Motion for Summary Judgment as to those claims.

C

Agreement to Restrict Development Rights

In addition to his claims against the Town, Plaintiff also seeks a declaration of his rights in regards to the Agreement and an injunction to prevent Carole from further violating that Agreement. Plaintiff alleges that Carole has violated the Agreement by placing tents and portable restroom facilities on the property, allowing automobile parking, and permitting other equipment to be placed on the property. Am. Compl. ¶ 6.

As previously stated, the Agreement prohibits "Development Rights." Carole admits to "occasionally [] pitching a tent . . . or having an occasional port-a-john or car parked" on the lot. Defs.' Mem. at 6. She argues, however, that these activities do not constitute "development" as contemplated by the Agreement. In support of this position, she cites to both the Town's zoning ordinance and the Rhode Island General Laws, which define development as "[t]he construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any structure; any

mining exaction, landfill or land disturbance; any change of use, or alteration or extension of the use, of land." Sec. 45-24-31(20); New Shoreham Zoning Ordinance § 51.

Typically, "whether a party has . . . materially breached its contractual obligations is usually a question of fact to be decided by the jury." Women's Dev. Corp. v. City of Cent. Falls, 764 A.2d 151, 158 (R.I. 2001) (quoting Nat'l Chain Co. v. Campbell, 487 A.2d 132, 135 (R.I. 1985)) (internal quotations omitted). Therefore, a determination of whether Plaintiff's rights under the Agreement have been violated by Carole's actions is best left to the fact finder. Furthermore, the Court's decision to grant or to deny declaratory relief under the Uniform Declaratory Judgments Act is purely discretionary. See Woonsocket Teachers' Guild Local Union 951, AFT, 694 A.2d at 729 (R.I. 1997). Thus, it is within the Court's authority to decline to take up the issue of declaratory relief pending proper fact-finding on whether or not a material breach of the Agreement has occurred in this case. For these reasons—and because this Court must review the evidence in the light most favorable to the nonmoving party—this Court denies Plaintiff's Motion for Summary Judgment as to Carole and Payne's 1614 Realty.

IV

Conclusion

For the reasons stated herein, this Court finds that Plaintiff does not have standing to pursue its claim for declaratory relief against the Town and, therefore, that claim must be dismissed. Accordingly, this Court grants the Town's Motion to Dismiss for lack of standing.

This Court also finds that the resolution of Plaintiff's claims against Carole and Payne's 1614 Realty would be inappropriate at this time because the determination of whether a party has breached its contractual obligations is typically a question of fact best decided by the jury. Accordingly, this Court denies Plaintiff's Motion for Summary Judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Clifton Payne v. Town of New Shoreham, et al.
CASE NO:	WC 12-0449
COURT:	Washington County Superior Court
DATE DECISION FILED:	July 18, 2013
JUSTICE/MAGISTRATE:	Stern, J.
ATTORNEYS:	
For Plaintiff:	Nicholas Gorham, Esq.
For Defendant:	Donald J. Packer, Esq.; William R. Landry, Esq.