STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: October 4, 2017)

CONSERVATION LAW FOUNDATION, INC.,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-1037**
CLEAR RIVER ENERGY, LLC, and TOWN OF JOHNSTON, RHODE ISLAND,	:	
Defendants.	:	
		(Consolidated with)

TOWN OF BURRILLVILLE, RHODE ISLAND,	:	
Plaintiff,	:	
v.	:	**C.A. No. PC-2017-1039**
CLEAR RIVER ENERGY, LLC, and TOWN OF JOHNSTON, RHODE ISLAND,	:	
Defendants.	:	

DECISION

SILVERSTEIN, J. Before the Court in these consolidated matters are Plaintiffs'—Conservation Law Foundation, Inc. (CLF) and the Town of Burrillville, Rhode Island (Burrillville) (collectively, Plaintiffs)—motions seeking a ruling that their respective Amended Complaints, to the extent that they seek declaratory relief, simply present questions of law for the Court, thus necessitating no discovery. At issue is whether the Town of Johnston, Rhode

Island's (Johnston) sale of water from the Providence Water Supply Board (PWSB) to Clear River Energy, LLC (CRE) is "for use for domestic, fire and other ordinary municipal water supply purposes" under P.L. 1915, ch. 1278, § 18 (hereinafter referred to as the 1915 Act). Defendants— CRE and Johnston (collectively, Defendants)—separately object to Plaintiffs' motions. The Court exercises subject-matter jurisdiction pursuant to the Uniform Declaratory Judgments Act, G.L. 1956 §§ 9-30-1, et seq.

I

Facts and Travel

On June 20, 2017, the Court issued a Decision (Decision) denying the Defendants' motions to dismiss as to Count I and as to Plaintiffs' claims for injunctive relief.[1] Thereafter, Plaintiffs filed motions in support of a ruling that their Amended Complaints solely present questions of law to be determined by the Court. The Defendants filed objections in response to Plaintiffs' motions. The Court heard argument on August 24, 2017.

II

Parties' Arguments

The Plaintiffs principally argue that the 1915 Act,[2] entitled "An Act to Furnish the City of Providence with a Supply of Pure Water," with its amendments, has a plain and unambiguous meaning that does not necessitate discovery. The Plaintiffs contend the pertinent language of the 1915 Act presents a pure question of law for the Court to decide and that no facts are necessary in order for the Court to determine the meaning of a specific phrase in question. CLF reminds the Court that in its Decision, it stated "[h]ere, the Court is presented a question of statutory

[1] Conservation Law Found., Inc. v. Clear River Energy, LLC, 2017 WL 2782312, *8 (R.I. Super. June 20, 2017).
[2] Id. at n.1.

interpretation . . . ." Id. at *7. CLF contends that in such situations, no evidence is necessary for the Court to address questions of law.

Moreover, CLF argues, the 1915 Act has a plain and unambiguous meaning. Specifically, CLF contends that the 1915 Act permits Johnston to use the water it buys from Providence "for domestic, fire and other ordinary municipal water supply purposes," and that Johnston's proposed use is not an ordinary municipal purpose. Thus, CLF believes that Johnston is mistaken regarding the ordinary use of water, and even if it is "ordinary," it is not "municipal."

Burrillville explains that the Court underscored the issue presented by Plaintiffs as a "concrete issue of statutory interpretation." Conservation Law Found., Inc., 2017 WL 2782312, *7. Burrillville further emphasizes that the Court stated that this "case [is] about water supply, and the discrete issue of whether Johnston has the legal authority to sell water to [CRE] in light of P.L. 1915, ch. 1278, § 18." Id.

With respect to statutory interpretation, Burrillville notes that the "interpretation [of a statute] is a question of law," Palazzolo v. State ex rel. Tavares, 746 A.2d 707, 711 (R.I. 2000), and the Court "is the final arbiter of questions of statutory construction." Town of Burrillville v. Pascoag Apartment Assocs., LLC, 950 A.2d 435, 445 (R.I. 2008). Burrillville points out that "'when the language of a statute is clear and unambiguous, [the Court] must interpret the statute literally and must give words of the statute their plain and ordinary meanings'"; as a result, there is no room for statutory construction, and the Court must apply the statute as written. Liberty Mut. Ins. Co. v. Kaya, 947 A.2d 869, 872 (R.I. 2008) (quoting State v. LaRoche, 925 A.2d 885, 887 (R.I. 2007)).

In addition, Burrillville further maintains that "'[where] . . . a statute does not define a word, courts will often apply a common meaning as provided by a recognized dictionary.'" In re

Review of Proposed Town of New Shoreham Project, 25 A.3d 482, 513 (R.I. 2011) (quoting Planned Env'ts Mgmt. Corp. v. Robert, 966 A.2d 117, 123 (R.I. 2009)). When interpreting the 1915 Act, Burrillville urges the Court to examine the plain meaning of the words and utilize "well-established maxims of statutory construction in an effort to glean the intent of the Legislature." Pascoag Apartment Assocs., LLC, 950 A.2d at 445. In doing so, Burrillville requests that the Court "determine the ordinary meaning as of the time of enactment." Chambers v. Ormiston, 935 A.2d 956, 961 (R.I. 2007)(emphasis in original). Thus, notes Burrillville, "[u]nless a contrary intent clearly appears on the face of the provision, absent equivocal or ambiguous language, the words cannot be interpreted or extended but must be applied literally." McKenna v. Williams, 874 A.2d 217, 231 (R.I. 2005).

The Defendants object to the Plaintiffs' motions, principally arguing that the pertinent language of the 1915 Act is ambiguous, and thus, in order for the Court to properly adjudicate the issues in the Plaintiffs' Amended Complaints, limited discovery is not only proper, but also necessary. In other words, according to Defendants, the Plaintiffs violate principles of statutory construction in urging the Court to determine whether a municipality's water supply purpose is "ordinary" without analyzing a municipality's historical and current acts and practices—information the Defendants expect to gather during discovery.

CRE further maintains that Plaintiffs' interpretation of the 1915 Act ignores, and indeed conflicts with, other sections of the 1915 Act. For example, CRE notes that Plaintiffs' interpretation of the 1915 Act would prohibit all municipalities subject to the 1915 Act from selling water to any commercial or industrial entity, and thus, would lead to an "absurd result." See Sorenson v. Colibri Corp., 650 A.2d 125, 129 (R.I. 1994) (citations omitted).

Johnston joins CRE in asserting that it has the right to take and receive water from what is now the PWSB, and that it also has the "right" to "supply" water to end-users outside the PWSB system without restriction. See Johnston's Obj. at 1-3. Specifically, Johnston asserts its proposed transaction does not fall outside the "plain" meaning of the 1915 Act, because the 1915 Act is susceptible to more than one meaning. State v. Hazard, 68 A.3d 479, 485 (R.I. 2013).

III

Questions of Law

"[W]hen . . . a statute is clear and unambiguous, [the Court] must interpret the statute literally and must give the words of the statute their plain and ordinary meanings." Liberty Mut. Ins. Co, 947 A.2d at 872. "'In matters of statutory interpretation [the Court's] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.'" Alessi v. Bowen Court Condo., 44 A.3d 736, 740 (R.I. 2012) (quoting Webster v. Perrotta, 774 A.2d 68, 75 (R.I. 2001)). In evaluating whether a statute is ambiguous, "[the Court] must 'consider the entire statute as a whole; individual sections must be considered in the context of the entire statutory scheme, not as if each section were independent of all other sections.'" Hazard, 68 A.3d at 485 (quoting Generation Realty, LLC v. Catanzaro, 21 A.3d 253, 259 (R.I. 2011)); see also Alessi, 44 A.3d at 742; Jerome v. Probate Court of Barrington, 922 A.2d 119, 123 (R.I. 2007).

However, it is well settled that "'[a]mbiguity exists . . . when a word or phrase in a statute is susceptible of more than one reasonable meaning.'" Hazard, 68 A.3d at 485 (quoting Drs. Pass and Bertherman, Inc. v. Neighborhood Health Plan of R.I., 31 A.3d 1263, 1269 (R.I. 2011)). "[W]hen [the Court is] confronted with ambiguous language, 'the primary object of the [C]ourt is to ascertain the legislative intention from a consideration of the legislation in its entirety,

viewing the language used therein in the light, nature, and purpose of the enactment thereof.'" State v. Clark, 974 A.2d 558, 571 (R.I. 2009) (quoting State v. Smith, 766 A.2d 913, 924 (R.I. 2001)). "'In matters of statutory interpretation [the Court's] ultimate goal is to give effect to the purpose of the act as intended by the Legislature.'" GSM Indus., Inc. v. Grinnell Fire Prot. Sys. Co., 47 A.3d 264, 268 (R.I. 2012) (quoting Webster, 774 A.2d at 75). Finally, the Court is mindful of the longstanding principle that "'statutes should not be construed to achieve meaningless or absurd results.'" McCain v. Town of N. Providence ex rel. Lombardi, 41 A.3d 239, 243 (R.I. 2012) (quoting Ryan v. City of Providence, 11 A.3d 68, 71 (R.I. 2011)).

A

Legislative Intent

Before the Court is a discrete issue concerning an interpretation of the 1915 Act. The issue before the Court is whether Johnston's sale of water from the PWSB to CRE is "for use for domestic, fire and other ordinary municipal water supply purposes" under P.L. 1915, ch. 1278, § 18, as amended.

The 1915 Act provides, in pertinent part, that several towns, cities, and other municipalities, including Johnston and Burrillville, "shall have the right to take and receive water from said storage reservoir or reservoirs for use for domestic, fire and other ordinary municipal water supply purposes . . . ." P.L. 1986, ch. 84, § 18.

The 1915 Act was originally enacted by the General Assembly over 100 years ago. Since the 1915 Act has been reenacted from time to time, most recently in 1986, there have been substantial advancements in technology, science and manufacturing.[3] The Court finds it could

[3] As an example, if in 1915 the only manufacturer serviced by water from Johnston produced buggy whips and now Johnston supplies a manufacturer of automobiles with water, would

lead to an "absurd result" if the Court failed to authorize discovery as to how the phrase here in question has been applied by the municipalities subject to it.[4] Sorenson, 650 A.2d at 129.

It is clear the plain and ordinary language of the 1915 Act gives Johnston a statutory right to take and receive water from "[a] storage reservoir or reservoirs for use for domestic [and] fire" purposes. P.L. 1986, ch. 84, § 18. Although words such as "domestic" and "fire" may, in the context of the 1915 Act, have a clear and unambiguous meaning, the pertinent phrase, "other ordinary municipal water supply purposes," leaves this Court with a substantial quandary where it is unable to provide an accurate assessment as to what the phrase meant when the General Assembly enacted the 1915 Act, because this phrase is reasonably susceptible to more than one meaning. Hazard, 68 A.3d at 485.

Furthermore, it is well settled that where "'a statute does not define a word, [C]ourts will often apply a common meaning as provided by a recognized dictionary.'" In re Review of Proposed Town of New Shoreham Project, 25 A.3d at 513 (quoting Planned Env'ts Mgmt. Corp., 966 A.2d at 123). However, here, the Court is not seeking to define a word, but rather a phrase or six words in concert within the context of the 1915 Act; namely, "other ordinary municipal water supply purposes." See Clark, 974 A.2d at 571.

In order for the Court to interpret and apply this pertinent language of the 1915 Act as a question of law, the Court may be assisted by consideration of evidence of how the pertinent language has been interpreted and applied by the entities subject to it. See DiPrete, 845 A.2d at

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Plaintiffs claim Johnston's current use violates the "ordinary municipal water supply purposes" provision?

[4] See Ret. Bd. of Emps.' Ret. Sys. of State v. DiPrete, 845 A.2d 270 (R.I. 2004). Cf. Provisions of an original act that are repeated in an amendment "are a continuation of the original law. . . . The provisions of the original act or section reenacted by amendment are the law since they were first enacted, and provisions introduced by the amendment are considered to have been enacted at the time the amendment took effect." 1A Norman J. Singer Sutherland Statutory Construction, § 22:33 at 387-89 (7th rev. ed. 2009).

281 (finding that "[p]rovisions of an original act that are repeated in an amendment 'are considered to be a continuation of the original law'") (quoting 1A Statutes and Statutory Construction, § 22:33 at 392-93 (Norman J. Singer 6th rev. ed. 2000)). Accordingly, the parties are authorized to engage in limited discovery in order to find evidence that may reveal how the phrase "other ordinary municipal water supply purposes" may have been interpreted and applied since 1915. Specifically, the parties are instructed to conduct limited discovery in accordance with the parameters suggested in Johnston's objection to Plaintiffs' motions.[5]

[5] "As to a limited scope of discovery, Johnston advocates for the following:

"1. Assuming CLF and Burrillville refuse to admit that water supply, as necessary, to generate electricity is an ordinary municipal water supply purpose, then there would have to be limited discovery which allows the parties to identify the various municipalities/water authorities in Rhode Island that supply water, as necessary, for the generation of electricity.

"2. In turn, there would have to be limited discovery into the practices of municipalities and water authorities in Rhode Island with regard to supplying bulk water suppliers, who, in turn, transport and distribute the water to end users that cannot be serviced by an existing water distribution system;

"3. Included within the above, there would have to be limited discovery into the practices of the municipalities/water authorities that take and receive water from PWSB in regard to water supply to bulk suppliers, who, in turn, transport and distribute the water to end-users that cannot be serviced by an existing water distribution system;

"4. There would have to be discovery with regard to the practices of water authorities in Rhode Island regarding efforts to increase water sales; thus, generating revenues for the benefit of ratepayers;

"5. There would have to be discovery into whether PWSB has interpreted and applied the language at issue as an express limitation; and

"6. There would have to be discovery into how the PUC has interpreted and applied the language since 1986; whether there are any limitations on resale under PUC's tariff as it relates to bulk sales at wholesale to municipalities/water authorities; and whether PUC encourages PWSB to increase its bulk sales to municipalities/water authorities for the benefit of ratepayers." See Johnston's Obj. at 12-13.

IV

Conclusion

The Court finds the pertinent language of the 1915 Act contained in Plaintiffs' Amended Complaints, specifically "other ordinary municipal water supply purposes," is ambiguous. In order to assist the Court in interpreting the 1915 Act, limited discovery, as herein provided, is necessary. Accordingly, Plaintiffs' motions for a ruling that this case presents a question of law hereby are denied. Prevailing counsel shall present an appropriate order consistent herewith which shall be settled after due notice to counsel of record.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Conservation Law Foundation, Inc. v. Clear River Energy, LLC and Town of Johnston, Rhode Island**
CASE NO:	**PC-2017-1037**
COURT:	**Providence County Superior Court**
DATE DECISION FILED:	**October 4, 2017**
JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**See attached list.**
For Defendant:	**See attached list.**

Conservation Law Foundation, Inc. v. Clear River Energy, LLC, et al.
PC-2017-1037

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RHODE ISLAND SUPERIOR COURT
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JUSTICE/MAGISTRATE:	**Silverstein, J.**
ATTORNEYS:	
For Plaintiff:	**See attached list.**
For Defendant:	**See attached list.**

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