STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

[FILED: May 28, 2014]

SEAPORT STUDIOS, INC.,	:	
Plaintiff,	:	
VS.	:	
	:	
RUSSELL W. WALDO; JAMES D.	:	**C.A. No. WC 09-0871**
HENNESSEY; JHRW, LLC; and	:	
118 BAY STREET CORPORATION,	:	
Defendants,	:	
VS.	:	
	:	
RANDALL S. SAUNDERS and	:	
JEAN C. SAUNDERS,	:	
Third-Party Defendants.	:	

DECISION

LANPHEAR, J. This matter is before the Court on Defendants Russell W. Waldo (Waldo), James D. Hennessey (Hennessey), JHRW, LLC (JHRW), and 118 Bay Street Corporation's (BSC) (collectively, Defendants) Motion for Partial Summary Judgment (Motion) on several property-related claims brought by Plaintiff Seaport Studios, Inc. (Seaport). In particular, Defendants seek summary disposition of Seaport's request for a declaratory judgment of its rights to a condominium deed, Seaport's assertion of rights to nine parking spaces on Defendants' property, and Seaport's allegations that Defendants interfered with its easement rights and engaged in a fraudulent transfer. Defendants also request this Court to lift the preliminary injunction prohibiting Defendants from selling, transferring or otherwise encumbering the contested parking spaces. Seaport objects to Defendants' Motion. For the reasons stated herein, Defendants' Motion is granted in part and denied in part. Because this action has not yet reached a final disposition, the preliminary injunction remains in effect.

I

Facts and Travel

In the early 1980s, Waldo and Hennessey took title to various adjacent parcels of land in the Watch Hill area of Westerly, Rhode Island. On October 3, 1985, Seaport, which runs a seasonal retail clothing business, entered into a ninety-nine-year land lease agreement (the Lease) with Waldo and Hennessey for one of these parcels, located on Bay Street in Watch Hill (the Seaport Property). The Seaport Property is surrounded on three sides by the parcels retained by Waldo and Hennessey. In pertinent part, the Lease provided that, should the Seaport Property ever become subject to the Rhode Island Condominium Act, G.L. 1956 §§ 34-36.1-1.01 to 34-36.1-4.20, Defendants would "furnish a condominium unit deed for the [Seaport Property] to [Seaport]" at no further cost to Seaport. The Lease also stated that the Seaport Property is subject to all applicable zoning restrictions. Lastly, the Lease stipulated that Defendants retained a right-of-way providing Defendants access to their property across the Seaport Property and that Seaport retained the right to move this right-of-way, either to a location designated in the Lease or to another location, with Defendants' approval.

In 2005, Defendants began to formulate a tentative development plan for their land in Watch Hill, which they submitted for approval to the Town of Westerly. Waldo and Hennessey then subdivided their land, including the Seaport Property, creating several land condominium units in 2008. One of these units was Unit C, on which Defendants constructed a parking lot. As part of their development plan, Defendants hoped to buy Seaport out of the remainder of the Lease and to further develop the Seaport Property. Accordingly, Defendants' 2005 development plan indicated that the Unit C parking lot would contain nine off-street parking spaces for commercial use, a sufficient number of spaces for Waldo and Hennessey's development plan—

which at that time included the Seaport Property—to comply with the off-street parking regulations of the Town of Westerly Zoning Ordinance (the Ordinance). Seaport, however, declined to sell its lease interest in the Seaport Property, and Defendants conveyed the Seaport Property to Seaport via a condominium deed on July 18, 2013. Defendants have since submitted revised development plans for town approval, the latest of which indicates no off-street parking for commercial use.

During the pendency of this litigation, Defendants subdivided Unit C into sub-condominium units, consisting of individual parking spaces, most of which Defendants have sold. On Seaport's motion, this Court entered a preliminary injunction on January 9, 2013, prohibiting Defendants from selling, transferring, or otherwise encumbering thirteen parking spaces in the Unit C lot until the final disposition of this case.

After Defendants had completed construction of the Unit C parking lot, they removed a stairway at the end of the right-of-way, which they had retained in the Lease, in order to install industrial air conditioning units. At the time, this stairway provided access to the Seaport Property from the Unit C parking lot, and Defendants' removal of the stairway cut off the direct access between the two. Seaport requested permission from Defendants to reconstruct the right-of-way in a different location, but the parties have been unable to agree on a new location.

Seaport brought the instant action in September of 2009, seeking declaratory and injunctive relief and damages for several alleged offenses. Specifically, Seaport's latest amended complaint asserts a breach of contract claim based on Defendants' alleged breach of the Lease by failing to provide Seaport with a condominium deed to the Seaport Property after converting the property into a condominium. Seaport also asserts that it had a property interest in the right-of-way between the parties' parcels and that Defendants' removal of the stairway and

refusal to permit Seaport to reconstruct the right-of-way in a different location encroached on that property interest and breached the Lease. Lastly, Seaport claims that it has a right to nine parking spaces in the Unit C parking lot, pursuant to either the Lease or to an implied easement that arose when Defendants subdivided their property into condominiums. [1]

In 2010, Defendants counterclaimed, seeking injunctive relief to bar Seaport from parking vehicles in the Unit C parking lot and damages for unpaid parking fees. At the same time, BSC also filed a third-party complaint against Randall and Jean Saunders, the owners of Seaport, seeking the same relief.

Defendants now move for summary judgment on all of the claims Seaport raised in its

[1] In addition to the arguments outlined in Seaport's latest amended complaint, Seaport has also raised two additional arguments in its memorandum in opposition to Defendants' Motion. First, Seaport claims that by refusing to allow it to use nine parking spaces in the Unit C lot, Defendants have breached a fiduciary duty they owe to Seaport. Second, Seaport argues that Defendants' initial allocation of nine parking spaces for commercial use in its 2005 development plan and subsequent refusal to allow Seaport to use the parking spaces have caused the Seaport Property to be out of compliance with the parking regulations of the Ordinance. Despite having had ample time in which to properly raise these claims in an amended complaint, Seaport has not sought leave to amend its complaint to include either of these claims. The Court, therefore, will not consider these arguments in ruling on the Motion because to do so would unfairly prejudice Defendants. See, e.g., Mitchell v. Cnty. of Nassau, 786 F. Supp. 2d 545, 564 (E.D.N.Y. 2011) (explaining that because "defendants are entitled to fair notice of the nature of plaintiff's claims, 'it is inappropriate [for plaintiffs] to raise new claims for the first time in submissions in opposition to a summary judgment motion'") (quoting Thomas v. Egan, 1 F. App'x 52, 54 (2d Cir. 2001)); see also Carr v. Gillis Associated Indus., Inc., 227 F. App'x 172, 176 (3d Cir. 2007) (explaining that trial courts "have broad discretion to disallow the addition of new theories of liability at the eleventh hour"); Gilmour v. Gates, McDonald & Co., 382 F.3d 1312, 1315 (11th Cir. 2004) (holding that "[a] plaintiff may not amend her complaint through argument in a brief opposing summary judgment"; rather, "[a]t the summary judgment stage, the proper procedure for plaintiffs to assert a new claim is to amend the complaint"). Moreover, Seaport's claim that Defendants have caused it to be out of compliance with the parking regulations of the Ordinance is premature, as it is predicated on the presumption that Seaport is, in fact, out of compliance with the Ordinance. It is the function of the Westerly zoning official, not this Court, to make initial determinations regarding noncompliance with the Ordinance, and the record before the Court is devoid of any evidence that such a determination has yet been made. See G.L. 1956 § 45-24-54; Town of Westerly Zoning Ordinance § 260-21. Consequently, the Court is reluctant to address the issue at this stage.

latest amended complaint. Seaport has objected to Defendants' Motion, and both sides have submitted supporting memoranda and exhibits. Additionally, Seaport and Defendants presented oral arguments and were fully heard before this Court on April 25, 2014.

II

Standard of Review

Super. R. Civ. P. 56(b) provides that "[a] party against whom a claim . . . is asserted or a declaratory judgment is sought may, at any time, move . . . for summary judgment in the party's favor as to all or any part thereof." Moreover, the Uniform Declaratory Judgments Act vests this Court with the "power to declare rights, status, and other legal relations." G.L. 1956 § 9-30-1. "This power is broadly construed, to allow the trial justice to 'facilitate the termination of controversies.'" Bradford Associates v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (quoting Capital Properties, Inc. v. State, 749 A.2d 1069, 1080 (R.I. 1999)).

Pursuant to Super. R. Civ. P. 56(c) (Rule 56(c)), "[s]ummary judgment is appropriate when, viewing the facts and all reasonable inferences therefrom in the light most favorable to the nonmoving party, the court determines that there are no issues of material fact in dispute, and the moving party is entitled to judgment as a matter of law." Delta Airlines, Inc. v. Neary, 785 A.2d 1123, 1126 (R.I. 2001). Summary judgment "should not be used as a substitute for a trial or as a device intended to impose a difficult burden on the nonmoving party to save his day in court unless it is clear that no genuine issue of fact remains to be tried." N. Am. Planning Corp. v. Guido, 110 R.I. 22, 25, 289 A.2d 423, 425 (1972). The Court's role in ruling on a motion for summary judgment, therefore, is to "determine whether there are any issues of fact to be resolved" and "'whether as a matter of law one party is entitled to a judgment.'" Palazzo v. Big G Supermarkets, Inc., 110 R.I. 242, 245, 292 A.2d 235, 237 (1972) (quoting Warren Educ. Ass'n

v. Lapan, 103 R.I. 163, 168, 235 A.2d 866, 870 (1967)).

"'Although summary judgment is recognized as an extreme remedy, . . . to avoid summary judgment the burden is on the nonmoving party to produce competent evidence that prove[s] the existence of a disputed issue of material fact.'" Moura v. Mortg. Electronic Registration Sys., Inc., No. 2013-107-A, slip op. at 5 (R.I. filed May 16, 2014) (quoting Sullo v. Greenberg, 68 A.3d 404, 407 (R.I. 2013) (internal quotations and citations omitted). Once a summary judgment motion is made, "[t]he burden rests upon the nonmoving party 'to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions.'" Mut. Dev. Corp. v. Ward Fisher & Co., 47 A.3d 319, 323 (R.I. 2012) (quoting Hill v. Nat'l Grid, 11 A.3d 110, 113 (R.I. 2011)). Thus, "by affidavits or otherwise[, opposing parties] have an affirmative duty to set forth specific facts showing that there is a genuine issue of material fact." Bourg v. Bristol Boat Co., 705 A.2d 969, 971 (R.I. 1998). "[A] litigant cannot avoid summary judgment by merely posing factual possibilities without submitting admissible evidence thereof." Nichols v. R.R. Beaufort & Assocs., Inc., 727 A.2d 174, 177 (R.I. 1999). Accordingly, when the nonmoving party would have the burden of proof as to a particular claim at trial, that party must "produce evidence that would establish a prima facie case for [that] claim" in order to survive a summary judgment motion. DiBattista v. State, 808 A.2d 1081, 1089 (R.I. 2002).

III

Analysis

A

Seaport's Right to a Condominium Deed and Defendants' Alleged Fraudulent Conveyance

Arguing that certain of Seaport's claims became moot when Defendants transferred the

Seaport Property to Seaport via a condominium deed in 2013, Defendants urge the Court to summarily decide these claims in their favor. Specifically, Defendants maintain that Seaport's request for the Court to issue a declaratory judgment ruling that the Lease obligates Defendants to convey the Seaport Property to Seaport via a condominium deed is moot because Defendants have already conveyed such a deed to Seaport. For the same reason, Defendants further argue that Seaport's fraudulent transfer claim is moot. In particular, Seaport alleges in its complaint that Waldo and Hennessey fraudulently conveyed the Seaport Property to JHRW and BSC in an effort to circumvent their obligation under the Lease to transfer the Seaport Property to Seaport as a condominium. However, Defendants argue that Seaport has already obtained the relief it sought in bringing its fraudulent transfer claim because Defendants have, in fact, already conveyed the condominium deed to Seaport.

In response to Defendants' mootness argument, Seaport offers no evidentiary support for either its claim that it is entitled to a declaratory judgment on the issue of the condominium deed or for its fraudulent conveyance claim. In fact, Seaport has failed to address this issue at all. Seaport has, therefore, entirely failed to meet its evidentiary burden in opposing Defendants' motion for summary judgment. See Mut. Dev. Corp., 47 A.3d at 323 (holding that once a summary judgment motion is made, "[t]he burden rests upon the nonmoving party 'to prove the existence of a disputed issue of material fact by competent evidence; it cannot rest on allegations or denials in the pleadings or on conclusions or legal opinions'") (quoting Hill, 11 A.3d at 113).

Moreover, the record clearly establishes that Seaport now holds the deed that it asks this Court to order Defendants to convey to it, as Seaport conceded at the hearing on the instant Motion that Defendants conveyed the Seaport Property to Seaport via a condominium deed on July 18, 2013. Thus, if this matter were to proceed to trial, a ruling in Seaport's favor "would

fail to have any practical effect on the controversy." Boyer v. Bedrosian, 57 A.3d 259, 272 (R.I. 2012). Seaport's claims relating to the condominium deed are therefore moot. See id. (explaining that "[a] case is moot if there is no continuing stake in the controversy"). As a result, there are no questions of fact relating to the delivery of the condominium deed for determination at trial. See N. Am. Planning Corp., 110 R.I. at 25, 289 A.2d at 425 (explaining that summary judgment is an appropriate way to dispose of a claim for which "it is clear that no genuine issue of fact remains to be tried"); see also Palmisciano v. Burrillville Racing Ass'n, 603 A.2d 317, 320 (R.I. 1992) (explaining that summary judgment should be granted when "there are no issues of fact for a jury or other trier of fact to determine or resolve"). Because there are no outstanding issues of material fact, the Court grants summary judgment on these claims. See Rule 56(c).

B

Parking Spaces

In moving for summary judgment on the issue of the contested parking spaces, Defendants assert that Seaport has no legal right, contractual or otherwise, to the parking spaces. As a result, Defendants maintain that Seaport's claims to the parking spaces must fail as a matter of law. Seaport's first claim to the spaces centers around the off-street parking regulations of the Ordinance, which require a 1379 square-foot retail space like Seaport's to provide nine off-street parking spaces. See Town of Westerly Zoning Ordinance § 260-77(6). The Seaport Property, however, does not currently have substantial off-street parking. Seaport, therefore, alleges that because the Lease contains a clause stating that the Seaport Property is subject to all applicable zoning laws, Defendants are obligated to provide Seaport with nine spaces in the Unit C parking lot in order to bring Seaport into compliance with the Ordinance's parking regulations. [2]

[2] Although Seaport's claim is based on its purported noncompliance with the parking regulations

Additionally, Seaport maintains that it has an interest in the parking spaces by virtue of an implied easement.

1

Compliance with the Westerly Zoning Ordinance

Defendants maintain that there is no evidence to support Seaport's claim that Defendants were under an obligation, pursuant to either the Ordinance or the Lease, to provide Seaport with off-street parking for its retail establishment. In asserting that Defendants were under such obligation, Seaport, in essence, advances a breach of contract claim, contending that the Lease's reference to the Ordinance obligates Defendants to ensure that Seaport is in compliance with the Ordinance by providing Seaport with nine off-street parking spaces. In order to withstand Defendants' summary judgment motion on this issue, Seaport must come forward with evidence sufficient to satisfy its burden of proof on the issue of a breach. Accordingly, the question for the Court is whether Seaport has provided sufficient evidence to show that Defendants have breached their contractual obligations relating to Seaport's compliance with the Ordinance. See Gorman v. St. Raphael Acad., 853 A.2d 28, 37 (R.I. 2004) (holding that "the burden of proof in a breach of contract action rests with a plaintiff to show that a defendant breached the contract").

Seaport relies solely on Paragraph 20 of the Lease in arguing that Defendants have a contractual obligation to provide Seaport with nine parking spaces. Paragraph 20 states, in pertinent part, that the Seaport Property is "subject to . . . zoning restrictions as are or may be imposed by governmental authorities." Assuming, without deciding, that the Lease provisions have not been superseded by Defendants' execution of a condominium deed conveying the

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of the Ordinance, the record is devoid of evidence that Seaport is actually out of compliance with these regulations. In fact, although the Court will not resolve the issue in this litigation, Seaport may, in fact, be in compliance with the Ordinance because the Seaport Property may qualify as a legal, preexisting, nonconforming use.

Seaport Property to Seaport, the Court finds that Paragraph 20 creates no contractual obligation on Defendants' part to ensure the Seaport Property's compliance with such zoning restrictions. See Clark-Fitzpatrick, Inc./Franki Found. Co. v. Gill, 652 A.2d 440, 443 (R.I. 1994) (holding that contract interpretation is a question of law for the Court to decide unless the contract provisions at issue contain an ambiguity). In fact, longstanding principles of contract interpretation hold that where "the lease agreement expressly provides that the use of the leased premises . . . [is] subject to the applicable zoning provisions, and the lease is silent as to any duty on the part of the [lessor] to obtain [zoning compliance]," the responsibility of compliance with applicable zoning regulations falls on the lessee. In re Racing Wheels, Inc., 5 B.R. 309, 313 (Bankr. M.D. Fla. 1980); accord Eddins Enterprises, Inc. v. Town of Addison, 280 S.W.3d 544, 550 (Tex. App. 2009) (interpreting a lease provision that provided that "the demised premises [are] subject to . . . zoning ordinances" as creating an agreement that "[the tenant] agrees to be subject to ordinances in effect at the time the lease was signed as well as ordinances enacted thereafter"); Say-Phil Realty Corp. v. De Lignemare, 131 Misc. 827, 829, 228 N.Y.S. 365 (Mun. Ct. 1928) (finding that where a lease is expressly made subject to zoning laws, such lease "place[s] the burden of compliance with the law . . . upon the tenant").[3]

Therefore, because the Lease contains no indication that Defendants promised to keep the Seaport Property in compliance with the Ordinance, Defendants cannot be in breach of contract for failing to do so. See Demicco v. Med. Assocs. of R.I., Inc., C.A.99-251L, 2000 WL 1146532, at *2 (D.R.I. July 31, 2000) (explaining that "[a] breach of contract has been defined as a 'violation of a contractual obligation, either by failing to perform one's promise or by interfering with another party's performance'") (emphasis added) (quoting Black's Law

[3] Seaport fails to cite any authority for the proposition that a lessor has the obligation to assure compliance with an unanticipated, substantial change in zoning requirements.

Dictionary 182 (7th ed.1999)). Consequently, there are no issues of material fact in dispute on this claim, and Defendants are entitled to judgment as a matter of law. See Rule 56(c). Summary judgment is, therefore, granted on this claim.

2

Implied Easement

Defendants further contend that Seaport has failed to produce adequate evidence to satisfy its burden of proof for its claim that an implied easement entitles it to nine parking spaces in the Unit C lot. Seaport, on the other hand, maintains that the evidence on the record shows that it has the benefit of an implied easement over the parking spaces. In particular, Seaport maintains that Unit C and the Seaport Property were commonly owned by Defendants until the parcels were severed when Defendants converted their property into condominiums, that Seaport used the contested parking spaces prior to this severance of ownership, and that Seaport's continued use of the parking spaces is reasonably necessary to its use and enjoyment of its property.

In order to establish the existence of an implied easement, a claimant must show the following elements: 1) the purported easement spans over two parcels that were once held in common ownership and have since been severed; 2) before the severance, the owner of the parcels continuously and apparently used the now servient parcel for the benefit of the now dominant parcel; and 3) the easement is "'necessary to the beneficial use and enjoyment of the [dominant] property.'" Wellington Condo. Ass'n v. Wellington Cove Condo. Ass'n, 68 A.3d 594, 601 (R.I. 2013) (quoting Wiesel v. Smira, 49 R.I. 246, 246, 142 A. 148, 149 (1928)); see also Hilley v. Lawrence, 972 A.2d 643, 650 (R.I. 2009) (holding that "when land is divided, the law will imply a grant of 'all those continuous and apparent easements which have in fact been

used by the owner during the unity, though they have no legal existence as easements'") (quoting Catalano v. Woodward, 617 A.2d 1363, 1367 (R.I. 1992)); Bovi v. Murray, 601 A.2d 960, 962 (R.I. 1992) (explaining that "[a]n implied easement is predicated upon the theory that when a person conveys property, he or she includes or intends to include in the conveyance whatever is necessary for the use and the enjoyment of the land retained" and that, consequently, "[i]f there is no unity of ownership, there can be no implied easement").

Based on the record at this time, the Court is unable to summarily determine whether Seaport will be able to satisfy each of these elements. To begin with, although the parties do not dispute that the Seaport Property and Unit C were at one time commonly owned by Defendants and that ownership of the parcels has since been divided between Seaport and Defendants, the parties cannot agree on when the common ownership was severed. In addition, questions remain as to whether the original common owner used Unit C for the benefit of the Seaport Property prior to severance and whether Seaport's use of the contested parking spaces is reasonably necessary to the beneficial use and enjoyment of the Seaport Property. See Wellington Condo. Ass'n, 68 A.3d at 601. "Summary judgment is a drastic remedy and should be cautiously applied." Ardente v. Horan, 117 R.I. 254, 256-57, 366 A.2d 162, 164 (1976). Thus, because "[i]t is well settled that summary judgment is an inappropriate manner of disposition in cases where a question of fact exists," the Court denies Defendants' summary judgment motion on this claim. Rose v. Cooper, 588 A.2d 1359, 1361 (R.I. 1991).

C

Right-of-Way

Defendants also move for summary judgment on Seaport's claims relating to the right-of-way that formerly connected Defendants' property to the Seaport Property. In its complaint,

Seaport alleges that Defendants breached the Lease and unlawfully encroached upon its property rights by removing the stairway at the end of the right-of-way and cutting off access from the Unit C parking lot to the Seaport Property. Arguing that this claim must fail as a matter of law, Defendants maintain that neither the Lease nor any other agreement between the parties gave Seaport a legal right to use or access the right-of-way or the stairway. Seaport also alleges that Defendants have breached the Lease by refusing to allow Seaport to reconstruct a new right-of-way connecting the parties' parcels in a different location. Asserting that Seaport has produced no evidence demonstrating that Defendants have refused to permit Seaport to reconstruct the right-of-way in a location permitted under the Lease, Defendants move for summary judgment on this claim as well.

Having submitted no other evidence in opposition to the Defendants' Motion, Seaport relies entirely on the provisions of the Lease as support for its claimed right to the right-of-way. The parties' dispute, therefore, amounts to a disagreement over the meaning of the terms of the Lease. Consequently, the question for the Court is whether the terms of the Lease leave any unanswered questions of fact for determination at trial. See Palmisciano, 603 A.2d at 320 (explaining that summary judgment should be granted when "there are no issues of fact for a jury or other trier of fact to determine or resolve"). "Contract interpretation is a question of law; it is only when contract terms are ambiguous that construction of terms becomes a question of fact." Clark-Fitzpatrick, Inc./Franki Found. Co., 652 A.2d at 443. Accordingly, if the Lease provisions relating to the right-of-way are unambiguous, the Court may definitively decide this matter on the instant Motion.

The Lease is unequivocal on the question of whether Seaport has a right to use or access the right-of-way. The Lease describes the right-of-way as "Lessor's [i.e., Defendants'] present

access right of way," thereby clearly defining the disputed right-of-way as Defendants' property interest, not Seaport's.[4] Seaport points to no provision in the Lease granting it a property interest in the right-of-way. The disputed contractual terms are, therefore, unambiguous, as they contain no language that is "'reasonably susceptible'" of the interpretation that Seaport also enjoyed an interest in the right-of-way. Vickers Antone v. Vickers, 610 A.2d 120, 123 (R.I. 1992) (holding that "a contract is ambiguous if it is 'reasonably susceptible of different constructions'") (quoting Westinghouse Broad. Co. v. Dial Media, Inc., 122 R.I. 571, 579, 410 A.2d 986, 991 (1980)); see also Wellington Condo. Ass'n, 68 A.3d at 599 (holding that "the party claiming [an] easement has a heightened burden of proof of clear and convincing evidence because of the policy considerations against placing undue burdens upon property"). Moreover, there is no evidence in the record showing that Seaport had any property claim to the stairway. Consequently, when Defendants removed the stairway connecting the Seaport Property to the Unit C parking lot, they did not interfere with Seaport's property rights. Rather, Defendants' actions only affected their own rights, as Seaport had no established right in either the stairway or the right-of-way. Accordingly, summary judgment is granted on this issue.

Seaport also claims that Defendants have breached the Lease by refusing to allow Seaport to reconstruct a new right-of-way connecting the parties' parcels in a different location. As Seaport underscores in its complaint, the Lease clearly permits Seaport to relocate *Defendants'* right-of-way at Seaport's expense, as long as the relocated right-of-way allows Defendants access to their adjoining parcel to the east. The Lease also unambiguously gives Seaport the right to build a new right-of-way on a designated area of Defendants' property or in some other

[4] To be clear, Defendants have a right-of-way over Seaport's leasehold interest. The Lease provision gave Seaport no right-of-way interest, but rather established the Seaport Property as the burdened party over which the right-of-way extended.

location, subject to Defendants' approval. However, there is no evidence before the Court demonstrating that, as Seaport claims, Defendants breached either of these Lease provisions. Because summary judgment is appropriate when "the plaintiff fail[s] to sustain [its] burden of proof on the elements of [its] claims," the Court finds that Defendants are entitled to judgment as a matter of law, and that summary judgment is appropriate on this issue. Mills v. R.I. Hosp., 828 A.2d 526, 529 (R.I. 2003).

IV

Conclusion

After reviewing the evidence and arguments submitted by both parties in the light most favorable to Seaport, this Court grants Defendants' Motion for Partial Summary Judgment as to Seaport's claim that Defendants have failed to convey the Seaport Property to Seaport via a condominium deed. Summary judgment is also granted as to Seaport's claim that Defendants have unlawfully encroached on Seaport's property rights by removing the stairway, as Seaport has no beneficial interest in this right-of-way. Finally, the Court grants summary judgment as to Seaport's claim that Defendants breached the Lease by failing to ensure that the Seaport Property was in compliance with the Town of Westerly Zoning Ordinance. Defendants established that there are no questions of material fact in issue for determination at trial, and as a result, Defendants are entitled to judgment as a matter of law on these claims.

The Court denies summary judgment on Seaport's claimed right to the contested parking spaces through an implied easement because material questions of fact remain, precluding summary disposition of this matter before trial. Because Defendants were enjoined from selling, transferring, or otherwise encumbering the contested parking spaces until final disposition of Seaport's claims to the spaces, the preliminary injunction will remain in effect until further order

of the Court. Counsel may submit an appropriate order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Seaport Studios, Inc. v. Russell W. Waldo, et al. v. Randall S. Sanders, et al.
CASE NO:	C.A. No. WC 09-0871
COURT:	Washington County Superior Court
DATE DECISION FILED:	May 28, 2014
JUSTICE/MAGISTRATE:	Lanphear, J.
ATTORNEYS:	
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