STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[FILED: June 2, 2014]

KARMIK, LLC	:	
	:	
v.	:	**C.A. No. NC 12-0055**
	:	
JACK KANE, in his capacity as Zoning Official of the Town of Middletown and TOWN OF MIDDLETOWN	:	

DECISION

VAN COUYGHEN, J. Plaintiff Karmik, LLC (Karmik) brings this action seeking a declaratory judgment regarding the extent of its right to place twenty-six mobile homes on its property in Middletown, Rhode Island under the terms of a Settlement Agreement executed in 1991 between Karmik and the Town of Middletown (Middletown or Town). The parties presented a joint Revised Agreed Statement of Facts and exhibits and now seek a decision by this Court. Jurisdiction is pursuant to G.L. 1956 § 9-30-1.

I

Facts and Travel

The facts pertinent to this Court's analysis regarding the present controversy are set forth in the Revised Agreed Statement of Facts filed jointly by the parties. The relevant facts are as follows. Karmik, a Rhode Island limited liability company, owns real property in Middletown designated as Lot 46 on Assessor's Plat 120 (Property). Revised Agreed Statement of Facts ¶¶ 1-2. Prior to the enactment of the Middletown Zoning Ordinance (Zoning Ordinance), the Property was used as a mobile home park in addition to a mix of other uses, including a

campground and motel. Id. ¶ 4, 10. Upon the enactment of the Zoning Ordinance in 1956, the Property's use as a mobile home park became a legal nonconforming use. Id.

In 1985, the Property was the subject of a lawsuit brought by the Town against Karmik's predecessors-in-title, Francis and Donna Pimental (Pimentals), who are also the sole members of Karmik. Id. ¶ 2, 5. The Town alleged that the Pimentals illegally expanded the mobile home park on the Property by adding six mobile homes to the then-existing thirteen, and by moving existing mobile homes. Id. According to the 1985 Complaint, the Pimentals added the extra mobile homes after the Middletown Zoning Board of Review denied their application to expand motel use on the property. Ex. A, Compl. ¶ 6-8. The Town alleged that the Pimentals used the extra mobile homes as additional motel units in violation of the Zoning Ordinance and the Zoning Board's denial. Id. The parties resolved the 1985 lawsuit in 1991 by entering into a stipulation (Settlement Agreement) providing that:

> "1. The [Pimentals], and their heirs, executors, administrators, successors and assigns are entitled to have up to twenty-six (26) mobile homes on their property designated as Lot 46 of Assessors Plat 120, as presently constituted.
>
> "2. The [Pimentals], and their heirs, executors, administrators, successors and assigns shall be allowed to continue to utilize the existing concrete pads along Prospect Avenue for mobile home and RV use, as set forth on the plan attached hereto.
>
> "3. All counts of the Complaint, and claims encompassed thereby, are dismissed with prejudice." Ex. C, Stipulation.

The Property is located in a residential R-20 zoning district that does not permit mobile home parks by right or by special use permit. Revised Agreed Statement of Facts ¶ 9. Karmik wishes to replace the existing mobile homes with up to twenty-six "double-wide" mobile homes

and abandon all other nonconforming uses.[1] Id. ¶ 10-12. Karmik informed the Zoning Official of the Town of Middletown, Jack Kane (Kane), of its intention to install the new mobile homes in a letter dated October 10, 2011. Id.; Ex. D, Karmik Letter, Oct. 10, 2011. In the letter, Karmik also announced its intention to withdraw an application for a building permit for fifteen concrete slabs, planning instead to use a "compacted crushed stone pier system" for the foundations. Id.

Kane responded in a letter dated November 16, 2011, informing Karmik that it would need to obtain a special use permit to alter the Property's existing nonconforming use. Id. ¶ 13; Ex. E, Kane Letter, Nov. 16, 2011. Kane also notified Karmik that the proposed new mobile homes would require permits to ensure compliance with the applicable building code. Id. Specifically, Kane noted that the Zoning Ordinance contains a comprehensive set of development standards which must be met in order to obtain a special use permit to construct a mobile home park. Revised Agreed Statement of Facts ¶ 15. It was Kane's position that even though the Property is not located in an MT zone—the only zone under the Zoning Ordinance that permits mobile home parks with special use permits—those standards nevertheless applied to the Property. Id. ¶ 15.[2]

Karmik brought the present action for declaratory judgment, alleging that the Settlement Agreement permits twenty-six mobile homes on the Property without any restrictions as to their size or location, and arguing that it does not need to comply with zoning provisions applicable to mobile home parks in Middletown.

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[1] Double-wide mobile homes are larger than the mobile homes currently on the property. The new mobile homes proposed by Karmik would be "substantially larger" than the original mobile homes—between 24' and 27' 4" wide, and 53.7' long on average. Revised Agreed Statements of Facts ¶ 14.

[2] The Zoning Ordinance for the Town of Middletown was entered into the record with the Revised Agreed Statement of Facts. This Court takes judicial notice of the Zoning Ordinance.

II
Standard of Review

Under the Uniform Declaratory Judgments Act (UDJA), this Court "shall have power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." Sec. 9-30-1; Tucker Estates Charlestown, LLC v. Town of Charlestown, 964 A.2d 1138, 1140 (R.I. 2009) ("[T]he Superior Court has broad discretion to grant or deny declaratory relief under the UDJA.") The UDJA's stated purpose is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status, and other legal relations." Sec. 9-30-12; see also Bradford Assocs. v. R.I. Div. of Purchases, 772 A.2d 485, 489 (R.I. 2001) (noting that because the UDJA is intended "to facilitate the termination of controversies, it is liberally construed by the courts so as to realize that goal") (quotation omitted). Although "other avenues of relief" may exist, the Rhode Island Supreme Court has "recognized that a party is not precluded from proceeding under the UDJA, particularly when 'the complaint seeks a declaration that the challenged ordinance or rule is facially unconstitutional or in excess of statutory powers, or that the agency or board has no jurisdiction.'" Tucker Estates Charlestown, LLC, 964 A.2d at 1140 (quoting Kingsley v. Miller, 120 R.I. 372, 374, 388 A.2d 357, 359 (1978)).

As a declaratory judgment is issued without a jury, the judge serves as the fact finder. See Haviland v. Simmons, 45 A.3d 1246, 1255-56 (R.I. 2012). Under the UDJA, the Court's decision to grant relief is purely discretionary. Town of Richmond v. Rhode Island Dep't of Envtl. Mgmt., 941 A.2d 151, 155 (R.I. 2008). For the Court to exercise its discretion under the UDJA, the parties must present an actual justiciable controversy, meaning that the "plaintiff has standing to pursue the action" and there is "some legal hypothesis which will entitle the plaintiff

to real and articulable relief." See Bowen v. Mollis, 945 A.2d 314, 316 (R.I. 2008) (quotation omitted).

This Court interprets a settlement agreement as "any other type of contract, applying [the] general rules of contract construction." Furtado v. Goncalves, 63 A.3d 533, 538 (R.I. 2013). "It is well settled that [w]hen contract language is clear and unambiguous, words contained therein will be given their usual and ordinary meaning and the parties will be bound by such meaning." Andrukiewicz v. Andrukiewicz, 860 A.2d 235, 238 (R.I. 2004) (quotation omitted). "The plain meaning of language must, of course, depend upon the context in which it is used." Commerce Oil Ref. Corp. v. Miner, 98 R.I. 14, 20, 199 A.2d 606, 609 (1964).

"'[C]lear and unambiguous language set out in a contract is controlling in regard to the intent of the parties to such contract and governs the legal consequences of its provisions.'" Dovenmuehle Mortg., Inc. v. Antonelli, 790 A.2d 1113, 1115 (R.I. 2002) (quoting Burke v. Potter, 771 A.2d 895, 895 (R.I. 2001) (mem.)). In other words, if a contract is unambiguous, "what is claimed to have been the subjective intent of the parties is of no moment." Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 560 (R.I. 2009) (citations omitted). The "'undisclosed intent that may have existed in the minds of the contracting parties'" is not pertinent to a court's consideration. Id. (quoting Westinghouse Broad. Co. v. Dial Media, Inc., 122 R.I. 571, 581 n.10, 410 A.2d 986, 991 n.10 (1980)).

Additionally, a court "may deem contractual provisions that violate public policy to be unenforceable." Mendez v. Brites, 849 A.2d 329, 338 (R.I. 2004); see also Ryan v. Knoller, 695 A.2d 990, 992 (R.I. 1997) (considering the General Assembly's expression of "a strong public policy in favor of insurance coverage for motor vehicle rental companies" and declining to enforce an intoxication exclusion in the insurance coverage provided by an agreement to rent a

vehicle because "the purpose of statutorily required insurance [was] . . . the protection of the public" and that purpose would be thwarted by enforcing the exclusion).

III

Analysis

A

Issue Presented

As jointly proposed by the parties, the issue presented in this case is as follows:

> "Whether the 1991 Settlement Agreement between Karmik's predecessors in interest and the Town gives Karmik the right to place up to twenty-six mobile homes on the Property without restrictions as to size and location and without complying with any requirements of the Zoning Ordinance." Proposed Issue to be Decided, Jan. 13, 2014.

The parties agree that Karmik may place twenty-six mobile homes on the Property. The fundamental issue in this case is whether Karmik may place those mobile homes without regard to the regulations contained in the Zoning Ordinance.

B

Contract Interpretation

A review of the Settlement Agreement reveals that it clearly and unambiguously grants Karmik certain, specific rights without implicating the Zoning Ordinance. See Andrukiewicz, 860 A.2d at 238. It states, in clear and unambiguous language, that Karmik may place twenty-six mobile homes on the Property and may continue to use existing concrete pads. See Dovenmuehle Mortg., 790 A.2d at 1115. Nowhere in the Settlement Agreement is there

language allowing Karmik to completely disregard the Zoning Ordinance; in fact, the document does not explicitly reference the Zoning Ordinance at all.[3]

While Karmik is correct that the Settlement Agreement does not provide that the twenty-six permitted mobile homes are to be limited in size or location, it similarly does not provide that Karmik will be released from complying with those provisions of the Zoning Ordinance that are not in conflict with the Settlement Agreement. To interpret the Settlement Agreement as urged by Karmik would require the Court to find that the Pimentals and the Town had an "undisclosed intent" to remove the Property from the requirements of the Zoning Ordinance entirely. Young, 973 A.2d at 560. However, as the language of the Settlement Agreement is clear and unambiguous, any alleged "undisclosed intent" is immaterial to this Court's analysis. Id.

Further, the Settlement Agreement contains a provision permitting the Pimentals, and Karmik as their successor-in-interest, to continue to use "the existing concrete pads along Prospect Avenue for mobile home and RV use." The Zoning Ordinance requires "buffering" along all exterior lot lines of a mobile home park, and requires a mobile home to be set back twenty feet from any internal street. See Zoning Ordinance §§ 2306, 2309. Without this grant of permission in the Settlement Agreement, the Property's concrete pads would be in violation of these provisions of the Zoning Ordinance. Thus, even though the Settlement Agreement does not explicitly reference the Zoning Ordinance, this provision would be rendered superfluous and meaningless if the parties had not implicitly acknowledged that this requirement of the Zoning Ordinance would otherwise apply. See Aware, Inc. v. Centillium Commc'ns, Inc., 604 F. Supp. 2d 306, 311 (D. Mass. 2009) (quoting Baybank Middlesex v. 1200 Beacon Props., Inc., 760 F.

[3] The Settlement Agreement does implicitly reference the Zoning Ordinance, which will be discussed below.

Supp. 957, 963 (D. Mass. 1991) ("a contract must not, whenever possible, be construed so as to render any of its terms meaningless")).[4]

The General Assembly's expressed public policy regarding zoning regulations further supports this interpretation of the Settlement Agreement. Specifically, the General Assembly's stated intent in enacting the Zoning Enabling Act of 1991 was to "empower each city and town with the capability to establish and enforce standards and procedures for the proper management and protection of land, air, and water as natural resources, and to employ contemporary concepts, methods, and criteria in regulating the type, intensity, and arrangement of land uses." Sec. 45-24-29. Additionally, the General Assembly noted that zoning regulations are intended to promote, inter alia, "the public health, safety, and general welfare"; "a balance of housing choices . . . to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing"; and "safety from fire, flood, and other natural or unnatural disasters." Sec. 45-24-30. The requirements found in the Zoning Ordinance applicable to mobile homes were promulgated to further the policy of the Zoning Enabling Act. The regulations and building permits that Kane contends Karmik must comply with under the Zoning Ordinance are designed to maintain the integrity of the mobile home park, ensure electrical service, a potable water supply, and a sewer, and generally to maintain the safety of all occupants.

[4] Karmik also contends that Article 23 of the Zoning Ordinance only applies to mobile home parks in MT zones, and does not apply to a legal nonconforming mobile home park outside of an MT zone. However, the Zoning Ordinance is clear that the requirements in Article 23 "shall apply to all mobile home parks" without restriction to MT zones. See Zoning Ordinance § 2303. Nothing in the clear and unambiguous language of this provision indicates that the Zoning Ordinance's requirements should not apply to mobile home parks anywhere within Middletown. See Solas v. Emergency Hiring Council of State, 774 A.2d 820, 824 (R.I. 2001) ("'It is well settled that when the language of a statute is clear and unambiguous, this Court must interpret the statute literally and must give the words of the statute their plain and ordinary meanings.'") (quoting Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 2006)).

Allowing the Settlement Agreement, which granted only the right to a certain number of mobile homes the use of the existing concrete pads, to stand as an implicit waiver from all applicable zoning regulations would defeat the Zoning Enabling Act's stated purpose. See Arnold v. R.I. Dep't of Labor & Training Bd. of Review, 822 A.2d 164, 168 (R.I. 2003) (this Court will not construe a statute in such a way as to "defeat its underlying purpose"). Those policies, especially those relating to health and safety—such as providing access to fire and rescue personnel, providing for sufficient sanitation, providing for the proper usage of utilities, and providing for adequate construction for safe occupancy and the ability to withstand natural disasters—are necessary, and to eliminate them from the construction and placement of mobile homes on the Property simply because a 1991 Settlement Agreement granted Karmik some specific rights would be against public policy. See id.; see also Gorman v. St. Raphael Academy, 853 A.2d 28, 39 (R.I. 2004) ("a contract term is unenforceable . . . if it violates public policy," in particular if it is "injurious to the interests of the public" or "interferes with the public welfare or safety"). The Zoning Board of Middletown is authorized to direct Karmik regarding how to proceed in its alteration of the existing nonconforming use on the Property in a way that is harmonious with the stated policies underlying the Zoning Enabling Act and the Zoning Ordinance.[5]

C

Res Judicata

This Court is not persuaded by Karmik's argument that the applicability of the Zoning Ordinance is barred by the doctrine of res judicata. "When invoked, [res judicata] makes a prior

[5] This Court also notes that the Zoning Board is also the proper venue for the parties' dispute over whether Karmik's proposed changes to the mobile home park constitute an alteration of the legal nonconforming use and thus implicate § 803(C) of the Zoning Ordinance. This Decision addresses only the arguments raised regarding the parties' declaratory judgment claim.

judgment in a civil action between the same parties conclusive with regard to any issues that were litigated in the prior action, or, that could have been presented and litigated therein." ElGabri v. Lekas, 681 A.2d 271, 275 (R.I. 1996) (citations omitted). "'[A] party defeated in one action cannot maintain a second action based on a ground which could properly have been, but was not, set forth and relied upon in the former action.'" Id. (quoting Wholey v. Columbian Nat'l Life Ins. Co., 69 R.I. 254, 262, 32 A.2d 791, 795 (1943)).

Res judicata "is appropriate where there exists 'identity of parties, identity of issues, and finality of judgment in an earlier action.'" Ritter v. Mantissa Inv. Corp., 864 A.2d 601, 605 (R.I. 2005) (quoting ElGabri, 681 A.2d at 275). To determine whether there exists identity of issues, Rhode Island has adopted the "transactional" rule, which "precludes the re-litigation of 'all or any part of the transaction, or series of connected transactions, out of which the [first] action arose.'" Id. (quoting ElGabri, 681 A.2d at 276). The scope of a "transaction" is "'to be determined pragmatically, giving weight to such considerations as whether the facts are related in time, space, origin, or motivation, whether they form a convenient trial unit, and whether their treatment as a unit conforms to the parties' expectations . . . .'" Id. (quoting ElGabri, 681 A.2d at 276).

Here, the 1985 suit arose out of a transaction, the scope of which cannot rationally be said to include a resolution of all zoning issues on the Property in perpetuity. See id. The 1985 suit arose out of Middletown's desire to stop the Pimentals from adding more mobile home units to their lot in violation of the Zoning Ordinance. Now, nearly thirty years after that case was first brought, Karmik seeks declaratory relief that it may place twenty-six new and larger mobile home units without regard to size or location or the building permits required by the Zoning Ordinance. The applicability of current zoning regulations to the Property, as they relate to

everything except the number of units that Karmik may have and the use of existing concrete pads, are not "related in time, space, origin, or motivation" to the 1985 case. See id. Quite clearly, they would not form a convenient trial unit; Karmik's previous attempt to change the nonconforming use of the Property for motel space is not related to its current plans to replace old mobile homes with new, larger units. This Court is not persuaded that the parties' expectations were that the 1991 Settlement Agreement would constitute a disposition of all future disputes regarding any applicable zoning regulations. When viewed pragmatically, this Court finds that the earlier action does not preclude the Town from implementing the Zoning Ordinance in the case before this Court, as long as it does not conflict with the specific rights explicitly established by the Settlement Agreement.

IV

Conclusion

This Court is satisfied that the terms of the Settlement Agreement are clear and unambiguous and convey the intent of the parties, which does not include relief for Karmik from all zoning regulations. Rather, the Settlement Agreement, by its terms, establishes Karmik's right to place twenty-six mobile home units and to use the then-existing concrete pads. Permitting the Settlement Agreement to create a lot completely free from zoning regulations would be contrary to public policy.

Karmik must comply with all zoning regulations, except those inconsistent with the rights established by the Settlement Agreement; that is, Karmik's right to place twenty-six similarly sized mobile home units and use existing concrete pads. Counsel for the prevailing party shall prepare an appropriate form of judgment.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Karmik, LLC v. Jack Kane, et al.
CASE NO:	C.A. No. NC 12-0055
COURT:	Newport County Superior Court
DATE DECISION FILED:	June 2, 2014
JUSTICE/MAGISTRATE:	Van Couyghen, J.
ATTORNEYS:	
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