STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

WASHINGTON, SC. **SUPERIOR COURT**

(FILED: May 14, 2015)

JAMES H. ARNOLD, SANDRA B. ARNOLD, JONATHAN ARNOLD, and ELINOR ST. JOHN ARNOLD, in her capacity as Trustee of the Lemuel H. and Elinor St. John Arnold Trust Agreement	:	
v.	:	**C.A. No. WC-2012-0379**
THOMAS L. ARNOLD, JR. individually and in his capacity as Trustee of the THOMAS L. ARNOLD, JR. TRUST and LILLIAN B. ARNOLD individually and in her capacity as Trustee of the LILLIAN B. ARNOLD TRUST	:	

DECISION

TAFT-CARTER , J. This case is before the Court for decision following a non-jury trial on a Complaint relating to a property dispute between Plaintiffs—James H. Arnold, Sandra B. Arnold, Jonathan Arnold, and Elinor St. John Arnold, in her capacity as Trustee of the Lemuel H. and Elinor St. John Arnold Trust Agreement (Plaintiffs)—and Defendants—Thomas L. Arnold, Jr.[1] and Lillian B. Arnold, individually and in their capacities as trustees of their respective trusts (Defendants). Plaintiffs and Defendants had previously reached an agreement to settle and end pending litigation relating to this property dispute. A Consent Order was entered by the Court on July 30, 2010. On June 13, 2012, Plaintiffs filed the instant four-count Complaint in Washington County Superior Court, seeking interpretation of the Consent Order, a

[1] On March 3, 2015, the Court was notified by the proper filing of a Suggestion of Death Upon the Record pursuant to Super. R. Civ. P. 25(a)(2) of the death of codefendant Thomas L. Arnold, Jr. during the pendency of this action.

declaratory judgment, and injunctive relief. In response, Defendants filed a counter-claim seeking a declaratory judgment, injunctive relief, and attorney fees, as well as alleging breach of contract.

I

Facts and Travel

Having reviewed the Joint Statement of Undisputed Facts (JSUF) and the evidence presented by both parties at trial, the Court makes the following findings of fact.

Plaintiffs and Defendants are neighbors in an area in the Town of Charlestown known as "Arnolda." JSUF ¶ 1. Arnolda consists of a small collection of summer homes on the northern shore of Charlestown Pond or Ninigret Pond (the Pond) and named after the Arnold family, its original settlers. Id. Plaintiffs are co-owners of real property located in Arnolda on the northern shore of the Pond described as Lot 24 on Charlestown Tax Assessor's Plat 7 and known as "the Lighthouse Property." Id. Defendants own real property described as Lot 31-2 on Tax Assessor's Plat 7 (Lot 31-2). Id. at ¶ 4.

In August of 2007, Plaintiffs initiated the first of what ultimately have become three consolidated civil actions currently pending in Superior Court concerning the Lighthouse Property. Id. at ¶¶ 2, 7. The first action, Arnold, et al. v. Mahony, et al., C.A. No. WC-2007-0505 (the Mahony Action), was brought against defendants Walter B. Mahony, III, Barbara Mahony Kent, and Robert Mahony—three siblings who then owned Lot 23, which is situated between the Lighthouse Property and the Pond. Id. at ¶ 3. In October 2008, Plaintiffs initiated a second action, Arnold, et al. v. Arnold, C.A. No. WC-2008-0826 (TL Arnold Action), this time against Defendants herein. Id. at ¶ 4. Both of these actions concern the Lighthouse Property's access to its floating, seasonal dock at the shore of the Pond (the Lighthouse Dock). Id. at ¶¶ 4,

6. More specifically, the two actions arose out of a dispute over the scope and nature of the rights conferred in the original deed that created the Lighthouse Property by conveying Lot 24 to members of the Arnold family.[2] Id. at ¶ 11.

The Mahony Action and the TL Arnold Actions were consolidated. Id. at ¶ 12. The consolidated actions were the subject of a non-jury trial that commenced on July 26, 2010. Id. After the second day of trial, the Court, counsel, and parties agreed to suspend the proceedings while the parties attempted to work out settlement terms. Id. During the negotiations relating to the contested issues, the parties discussed the location and size of the right-of-way and Lighthouse Dock and walked the site to ensure that the evolving terms of the working agreement accurately tracked the field conditions. Id. at ¶ 14. On July 30, 2010, the parties reached an agreement and entered into a Consent Order to settle both actions. Id. at ¶ 15.

It is undisputed that the Consent Order was intended to resolve all differences between the parties with respect to the easements (express, implied, and prescriptive) benefiting the real estate known as the Lighthouse Property over real estate known as Lot 23 and Lot 31-2 on the Town of Charlestown Tax Assessor's Plat 7. Id. at ¶ 1. A term of the Consent Order required the parties to dismiss with prejudice all claims and counterclaims in the consolidated actions. Consent Order § 16. The parties now dispute several clauses of the Consent Order.

In their Complaint, Plaintiffs ask this Court to (1) declare and adjudicate that Plaintiffs have the right under the easement established in the Consent Order to exit the strict fifteen-foot wide easement to turn around vehicles launching and retrieving boats and ask this Court to enter a permanent injunction ordering Defendants to remove a fence that is currently outlining the

[2] The 1927 deed creating the Lighthouse Property included the following grant, "a right of way to shore of Charlestown Pond or Bay, and the facilities of large crib dock and small boat house, and also a right of way to the ocean beach over the land of the Grantor and the privilege of building a small bath house for two families and guest not further than twenty (20) feet south of the large bath house now owned by the Grantor." JSUF ¶ 11.

perimeters of the easement; (2) enter a mandatory permanent injunction ordering Defendants to reinstall the courtesy gate as it existed in 1988; and (3) declare and adjudicate that Plaintiffs have the right to install posts on the floating dock.

Defendants' counterclaim (1) seeks a declaratory judgment in Defendants' favor; (2) alleges breach of the Consent Order; (3) seeks an injunction enjoining Plaintiffs from accepting a final definitive plan and executing a stipulation of dismissal; and (4) asks this Court to award Defendants attorneys' fees and costs.

The Court conducted a one-day non-jury trial on July 16, 2014. James H. Arnold testified for the Plaintiffs, and Lillian B. Arnold testified for the Defendants.

A

Testimony of Plaintiff James H. Arnold

James Arnold has been a seasonal resident of the Lighthouse Property in Charlestown, Rhode Island his entire life. Tr. at 7, July 16, 2014. From 1978 until July of 2010, James Arnold participated in and observed boats being launched from the Lighthouse Property into the water at the Lighthouse Dock. Id. at 21, 23; Ex. 62 (location boat was retrieved from 1978 to 2010). During this period, the boats were launched from a boat trailer attached to a motor vehicle. Tr. at 21. The launch required a three-point turn by the motor vehicle due to the configuration of the area. Id. at 20-21. Every time he launched the boat this maneuver was required. Id. at 23. Over the years, different vehicles were used to launch the boat, all requiring the maneuver. Id. at 21.

Currently, James Arnold owns a seventeen-foot boat trailer that holds a fourteen-foot skiff boat. Id. Prior to the relocation of the Lighthouse Dock, Defendants installed chains in the area where Plaintiffs would make the three-point turn. Id. at 26; Exs. 56-58. Mr. Arnold testified that "[he] tried to do a three-point turn into the location of what's the current dock and it

was too tight" because of these chains. Tr. at 26. After the chains were installed, he contacted the Defendants concerning this issue. The Defendants agreed to remove a tree which blocked the right-of-way and move one of the chain posts. Id. at 27. Despite these accommodations, it was impossible to maneuver even the smallest vehicle. Id. James Arnold testified that the fences outlining the Launching and Retrieval Easement keep him from being able to make the three-point turn necessary to launch the boat. Id. at 31. He explained that the three-point turn was necessary to launch the boat because he is required to "back the trailer into the water to deposit or pick up the boat." Id. at 32.

In 2012, after the Coastal Resources Management Council (CRMC) approved the relocation of the Lighthouse Dock, a chain fence was installed in the intersection of Lot 23 and Lot 31-2 on the Launching and Retrieval Easement. Id. at 29-30; see Exs. 7, 55. To Mr. Arnold's knowledge, this chain fence was installed by Peter Mahony (owner of Lot 23). Tr. at 30. The effect of the installation ended his ability to launch and retrieve boats. James Arnold explained that he could not "get around [that curve] with a vehicle of any sort and a boat trailer." Id. at 31. The configuration prevented anyone from circumventing the corner. Id. at 33; see Ex. 86. He had not raised any objections to the fences that were depicted in the DiPrete Engineering Plan (that was submitted to CRMC) because he did not realize that the fences would extend to the shore. Id. at 84; see Ex. 5.

James Arnold testified that he was familiar with the terms of the Consent Order and he was present during the negotiations. Tr. at 84. He understood the terms of the Consent Order at the time it was entered. At the time he agreed to the terms of the Consent Order, he knew that the fifteen-foot width of the Launching and Retrieval Easement would be insufficient to make the necessary three-point turn. Id. Mr. Arnold did, however, negotiate other issues involving

boat launching space, including the widening of the width of the cleared space from eight feet to ten feet to ensure his ability to launch the boat. Id. at 66-67. Notwithstanding, the negotiations did not include discussions about the necessity to have greater than a fifteen-foot wide area to complete a three-point turn. He presumed that Plaintiffs "would continue to do what [they] had done for the previous 31 years, which would be to do a three-point turn and then back into the water." Id. at 33-34. This presumption was not addressed during the Consent Order negotiations. Id. at 85-86. Without the ability to navigate the three-point turn, he was unable to back his vehicle and trailer down the Launching and Retrieval Easement. Id. at 34, 40; Ex. 87 (video depicting inability to maneuver vehicle and trailer). No video or photography of any attempt to negotiate the easement with a smaller tractor, trailer, or boat was presented at trial, nor has he attempted to use the option of a front-end hitch. Tr. at 74-75, 103. Since the fence was erected, as shown in Exhibits 86 and 58, Mr. Arnold has not launched boats on the Launching and Retrieval Easement. Id. at 45.

Mr. Arnold also described the history of the post and chain device that was installed by Harriet Arnold prior to the entry of the Consent Order. This post and chain device began as a chain hooked to a tree that extended across the right-of-way then hooked into a post. To the left of the post was a courtesy gate. Id; see Ex. 41. This courtesy gate was an area approximately four feet wide that enabled people to walk around rather than walk under the chain. Tr. at 45. The courtesy gate was installed to ensure that the Lighthouse Property occupants did not have to stoop under the wire when they walked down to the dock. Id. at 47. After 2010, the post and chain device no longer includes a walk-around gate. Id. at 49-50. This change affects his 90-year-old stepmother who now has to bend down under the wire. Id. at 50. Defendants refused any request to install the courtesy gate. Id. at 50-51. The issue of the courtesy gate was not

addressed in the Consent Order because Mr. Arnold was under the impression that they would build the same type of gate that existed prior to the Consent Order. Id. at 94-95

James Arnold testified with respect to the relocation of the Lighthouse Dock. Id. at 51. This dock relocation plan was submitted to CRMC. Id. at 54; see Ex. 5. The purpose of the relocation of the Lighthouse Dock was to place it closer to the Launching and Retrieval Easement. The Lighthouse Dock was identified in its original location in the early 1980s. Id; see Ex. 5. James Arnold alleges that the posts existed since the dock was built in 1978 until they disappeared in December of 2009. After the posts disappeared, he applied for and received permission from CRMC to replace them. Tr. at 52; see Ex. 45 (CRMC Maintenance Assent). The posts have never been replaced. Tr. at 55. Mr. Arnold describes the Lighthouse Dock posts as including a rod which ran through the ramp and attached it to the shore. Id. at 52-53. The application as submitted and approved by Mr. Arnold did not include any posts. Id. at 54; see Ex. 5. He did not object to the application because he overlooked that detail but now seeks to correct it. Tr. at 56, 95-96. He claims that the absence of the posts in the relocated Lighthouse Dock has created two issues: (1) his inability to extend the ramp and (2) the possibility that Ocean House Marina may not find the exact location to place the dock every spring. Currently, the relocated Lighthouse Dock is anchored by three cinderblocks. Id. at 58. During seasons of high tide, the Plaintiffs are required to leap over the water's edge to get on the relocated Lighthouse Dock. Id.; see Ex. 60 (photograph of dock during high tide). Mr. Arnold believes the extension of the dock is necessary and has an approved note from CRMC allowing him to extend the length by another two feet. Tr. at 100-02.

B

Testimony of Defendant Lillian B. Arnold

Lillian Arnold testified that she has visited or lived in the Arnolda section of Charlestown since 1959. Id. at 125. Currently, she and her husband, codefendant Thomas L. Arnold Jr., are permanent residents of Charlestown. Id. at 125-26. They reside in a home located on Lot 31-1. They also own Lot 31-2 which is the subject of this suit. Id. at 126-27. She recalled the negotiations surrounding the Consent Order and agrees that the negotiations were detail-oriented, intensive, and complete. Id. at 128. The negotiations included site visits by the parties. The parties took time to measure the areas at issue. Id. The fifteen -foot width of the easement was important to the Defendants, as their son will hopefully be building a home on Lot 31-2 soon. Id. at 129. According to a survey conducted on Lot 31-2, the setback would require that the house be located in the northwestern portion of Lot 31-2 (very close to the right-of-way). Id. at 131-33.

After the Consent Order was executed, the parties began the preparation for the Definitive Plan. Id. at 135. In addition, the right-of-way was cleared of some trees, and the ground was leveled. Id. She pointed out that the Plaintiffs never discussed the topic of a courtesy gate during the negotiations. Id. at 136. She explained that historically the Lighthouse Property occupants traveled through the Mahony driveway to access the Pond by foot; therefore, the courtesy gate was not installed for the Lighthouse Property's benefit as James Arnold suggested. Id. at 137. She also explained that because her property abuts Ninigret Park, she frequently has issues with trespassers, and that such concern has risen in recent years as several big events are hosted at the park attracting over 10,000 participants. Id. at 137-38. Regarding

the dock posts now requested by Plaintiffs, Lillian Arnold testified that they had never previously raised this concern during negotiations of the Consent Order. Id. at 138.

Ms. Arnold expressed that the Consent Order did not specify the size of a vehicle or boat contemplated to be launched on the right-of-way. Id. at 143-45. Ms. Arnold discussed other options to launching a boat, including a ball-hitch on the front of the vehicle. She acknowledged that she did not recall whether she informed Plaintiffs personally before putting up the fence outlining the right-of-way, but insisted that they were notified by the DiPrete Engineering Plan, which was approved by CRMC and depicted the fences. Id. at 148. Ms. Arnold testified that she had not personally seen any specific dock posts or boats docked prior to the photo exhibits in this proceeding. Id. at 155-56. It was her belief that Plaintiffs wanted to install permanent posts pile-driven in cement, and not the wooden posts that were depicted in photographs of the original Lighthouse Dock. Id. at 158. Finally, she testified that as of June 1, 2010, she had incurred fees totaling approximately $16,600 defending this action. Id. at 140.

Decision is herein rendered in accordance with Super. R. Civ. P. 52 (Rule 52). Other facts, including the relevant provisions of the Consent Order, will be discussed when pertinent to the analysis.

II

Standard of Review

Rule 52(a) of the Superior Court Rules of Civil Procedure states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specially and state separately its conclusions of law thereon." Super. R. Civ. P. 52(a). Therefore, in a non-jury trial, "[t]he trial justice sits as a trier of fact as well as of law." Hood v. Hawkins, 478 A.2d 181, 184 (R.I. 1984). Consequently, "[s]he weighs and considers the evidence, passes upon the credibility of the

witnesses, and draws proper inferences." Id. The trial justice need not engage in extensive analysis and discussion. Wilby v. Savoie, 86 A.3d 362, 372 (R.I. 2014). Strict compliance with the requirements of Rule 52 is not required if a full understanding of the issues may be reached without the aid of separate findings. Eagle Elec. Co. v. Raymond Constr. Co., 420 A.2d 60, 64 (R.I. 1980). Even brief findings and conclusions are sufficient as long as they address and resolve pertinent, controlling factual and legal issues. Broadley v. State, 939 A.2d 1016, 1021 (R.I. 2008).

This Court is "vested with jurisdiction to grant or deny declaratory relief pursuant to the [Uniform Declaratory Judgments Act] and to grant or deny injunctive relief as a court of general equitable jurisdiction. R.I. Republican Party v. Daluz, 961 A.2d 287, 295 (R.I. 2008); G.L. 1956 § 8–2–13. Moreover, "[a] decision to grant or deny declaratory or injunctive relief is addressed to the sound discretion of the trial justice . . . ." Foster Glocester Reg'l Sch. Bldg. Comm. v. Sette, 996 A.2d 1120, 1124 (R.I. 2010). A party seeking injunctive relief "must demonstrate that it stands to suffer some irreparable harm that is presently threatened or imminent and for which no adequate legal remedy exists to restore that plaintiff to its rightful position." Nye v. Brousseau, 992 A.2d 1002, 1010 (R.I. 2010). "Irreparable injury must be either 'presently threatened' or 'imminent'; injuries that are prospective only and might never occur cannot form the basis of a permanent injunction." Id. (citations omitted). Furthermore, the Uniform Declaratory Judgments Act, G.L. 1956 § 9-30-1 grants the Superior Court "power to declare rights, status, and other legal relations whether or not further relief is or could be claimed." The 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. Id. Section 9-30-12 provides that the Uniform Declaratory Judgments Act should be "liberally construed and administered."

Therefore, this Court finds the parties' requests for such relief here are appropriate under the Uniform Declaratory Judgments Act. After careful consideration of all the evidence presented during trial, as well as the applicable law in Rhode Island, the Court rules as follows.

III

Analysis

A

Launching and Retrieval Easement

Section 3 of the Consent Order provides in relevant part that the Launching and Retrieval Easement "shall mean a right and easement to pass and re-pass by vehicles to and from Lot 24 over Lot 23 and Lot 31-2 for the purpose of hauling, launching, or retrieving boats owned by the owners of Lot 24 not exceeding sixteen (16) feet in length to or from . . . the Relocated Lot 24 Dock . . . ." Consent Order § 3. The Consent Order further provides in § 3(i) that the portion of Lot 31-2 over which the Launching and Retrieval Easement may be exercised includes "that fifteen (15) foot area as shown on that Plan of Subdivision at 'Arnolda' in the Town of Charlestown prepared by Alan J. Easterbrooks, C.E. and recorded at Plat Book 12, Page 61 in the Town of Charlestown Land Evidence Records . . . maintained as cleared, mowed grass at least ten (10) feet wide." Consent Order § 3(i); Ex. 3 (Easterbrooks Plan). A copy of the Easterbrooks Plan was admitted into evidence as Trial Exhibit 3. The Consent Order provides for an alternative location for the easement if CRMC did not approve the relocation of the Lighthouse Dock to the fifteen-foot easement area shown on the referenced Easterbrooks Plan. Consent Order § 3(i). However, it is undisputed that CRMC approved the relocation of the dock. JSUF ¶ 25. The Consent Order also explains that the sole purpose of the easement is to ". . .

provide access to the shore of Charlestown Pond . . .” and that the use is on a “one time in, one time out” basis. Consent Order §§ 7, 3(ii).

Plaintiffs seek a declaration from this Court that they have a right under the Launching and Retrieval Easement to exit the fifteen-foot wide confines provided in the Consent Order to make a necessary three-point turn. Plaintiffs also ask this Court to issue an injunction directing Defendants to remove the fence currently obstructing Plaintiffs’ ability to conduct the necessary turn. Plaintiffs argue that the Consent Order contains a “latent ambiguity,” as it includes terms that, if strictly adhered to, frustrate the stated purpose of launching and retrieving boats. More specifically, Plaintiffs argue that the fifteen-foot width of the Launching and Retrieval Easement is inconsistent with the purpose, as it requires a motor vehicle to make a three-point turn outside the fifteen-foot width. Plaintiffs argue that the inability to turn around vehicles towing boats to and from the water renders use of the boat launch easement “unreasonably inconvenient and dangerous, if not impossible.”

On the other hand, Defendants contend that the clear and unambiguous language setting the width of the easement controls, and that any contrary interpretation would impermissibly rewrite the Consent Order. They urge this Court to adopt a strict interpretation of the Consent Order precluding Plaintiffs from exiting the fifteen-foot wide easement in order to effectuate a three-point turn. Defendants insist that if Plaintiffs wanted to ensure the use of a specific truck to launch their boats and to make a three-point turn, that fact should have been addressed in the Consent Order.

“A consent judgment is a contract, subject to the rules of contract law.” McEntee v. Davis, 861 A.2d 459, 462 (R.I. 2004). While a consent judgment must be approved by the court, it “is in essence a contract between the parties to the litigation and is to be construed as a

contract." Id. at 462-63 (internal quotations omitted). It is well settled that "[w]hether a particular contract is or is not ambiguous is a question of law." Young v. Warwick Rollermagic Skating Ctr., Inc., 973 A.2d 553, 558 (R.I. 2009). "In determining whether or not a particular contract is ambiguous," courts should "read the contract 'in its entirety, giving words their plain, ordinary, and usual meaning.'" Id. (quoting Mallane v. Holyoke Mut. Ins. Co. in Salem, 658 A.2d 18, 20 (R.I. 1995). "Where . . . there is no defect upon the face of the [contract], but, when attempting to put it into effect, it appears that there is uncertainty, . . . the ambiguity is latent." 102 A.L.R. 287. A latent ambiguity exists if a contract or similar document, seemingly unambiguous on its face, fails to specify the parties' rights or duties under certain conditions or in certain situations. Nature's Prods, Inc. v. Natrol, Inc., 990 F. Supp. 2d 1307, 1314 (S.D. Fla. 2013).

Here, the Consent Order is unambiguous. The Consent Order clearly specifies that the easement is fifteen feet wide. Consent Order § 3(i). The terms of the Consent Order and the application of those terms to the Lighthouse Property are unambiguous. The Consent Order specifies with accuracy the parties' rights or duties. See Natrol, Inc., 990 F. Supp. 2d at 1314. The Plaintiffs have failed to raise "certain situations" that are not addressed in the Consent Order. See id. Instead, Plaintiffs' claims relate to a situation known to them at the time the Consent Order was negotiated and entered into. The Consent Order clearly states that the easement shall be fifteen-feet wide and used to haul, launch, or retrieve boats owned by Plaintiffs not exceeding sixteen feet in length. Consent Order § 3. The only "condition or situation" raised is the need for more than a fifteen-foot width to complete a three-point-turn which Plaintiffs insist is required to properly launch and retrieve the boat. The Consent Order unambiguously

states the width of the easement. The Consent Order does not provide any exception to its terms. See Consent Order § 3.

Since the document is unambiguous, the Court will not consider parol or extrinsic evidence to aid in the interpretation and application of the instrument. See Young, 973 A.2d at 559. Courts apply the plain and ordinary meaning of the contract terms as written and may not consider the subjective intent of the parties. Id. at 558; Carpenter v. Hanslin, 900 A.2d 1136, 1147 (R.I. 2006). The mere fact that parties differ as to the meaning of an agreement does not necessarily mean that the agreement is in fact ambiguous, and, therefore, when the court looks at unambiguous contractual words, "what is claimed to have been the subjective *intent* of the parties is of no moment." Young, 973 A.2d at 560. However, because the ultimate goal is to determine the intent of the parties, our Supreme Court has noted that even where there is no ambiguity, it is permissible for the court nonetheless to "consider the situation of the parties and the accompanying circumstances at the time the contract was entered into, not for the purpose of modifying or enlarging or curtailing its terms, but to aid in the interpretive process and to assist in determining its meaning." Haffenreffer v. Haffenreffer, 994 A.2d 1226, 1233 (R.I. 2010) (citation omitted).

There is no dispute that the easement is fifteen feet wide. The evidence clearly establishes that at the time the Consent Order was entered into, the Plaintiffs knew that the easement was confined to the fifteen-foot width of the Launching and Retrieval Easement. Tr. at 84. James Arnold testified that from 1978 until the fences were erected along the right-of-way after the entry of the Consent Order, he either observed that the launching of the boats required a three-point turn, or actually conducted the maneuver himself. Tr. at 20-23. He testified that while negotiating the terms of the Consent Order, he understood that he needed as much space

on the right-of-way as possible, but admits that he was only successful in increasing the width from the original eight feet of cleared space, to ten feet. Id. at 66-67; see Town of Coventry v. Turco, 574 A.2d 143, 146 (1990) (holding it proper to consider the contract and its negotiation background to resolve a disagreement between the parties over interpreting a contract term). Additionally, the negotiations surrounding the Consent Order were detail-oriented, intensive, and complete. Tr. at 128. The negotiations included site visits and measurements. Importantly, James Arnold testified that at the time he entered into the Consent Order, he knew that the ten-foot width of cleared right-of-way would be insufficient for him to properly conduct the three-point turn.[3] Id. at 33. In addition, he assumed that no fence would be erected. Id. Furthermore, prior to accepting the terms of the Consent Order, James Arnold did not attempt to maneuver through the right-of-way with a smaller vehicle or boat, nor did he attempt to use the option of a front-end hitch to tow the boat.

The surrounding circumstances show, and the Plaintiffs concede, that the easement was fifteen feet wide. In addition, the Plaintiffs at the time of the negotiations knew that more space was needed to conduct the three-point turn. The uncontradicted evidence shows that Plaintiffs voluntarily agreed to these terms, despite knowing that they were not in their best interest. Plaintiffs can make as "good a deal or as bad a deal" as they see fit, limited to some extent by certain rules of enforcement, none of which are raised here. See Durfee v. Ocean State Steel, Inc., 636 A.2d 698, 703 (R.I. 1994).

[3] This admission removes any possibility of the defense of mistake. In fact, Plaintiffs specifically reject the idea raised by the Court during trial that mistake may be a defense raised. See Tr. at 116; see also Pls.' Post Trial Brief at 12; see also In re McBurney Law Servs., Inc., 798 A.2d 877, 888 (R.I. 2002) (it is possible for a court to release a party from a consent judgment if the moving party can demonstrate fraud, mutual mistake, or actual absence of consent on the part of the negotiating parties).

After reading the Consent Order and giving the terms included their "plain, ordinary, and usual meaning," as well as reviewing the circumstances surrounding the negotiation of the Consent Order, this Court concludes that the Consent Order is unambiguous and the width of the easement set in the Consent Order is fifteen feet, ten feet cleared. Therefore, this Court finds that Plaintiffs do not have the right under the Consent Order to exit the fifteen-foot area established therein. Consequently, this Court denies Plaintiffs' request for a permanent and preliminary injunction ordering Defendants to remove the fence currently outlining the easement.

B

Post and Chain Device

Section 6 of the Consent Order provides in relevant part that "[o]nly the owners of Lot 24 [Plaintiffs] and their houseguests shall have the right and benefit of the Pedestrian / Golf Cart Easement and the Launching and Retrieval Easement as aforesaid," and that owners of Lots 23 and 31-2 [herein, Defendants] and their agents "shall not impede, impair, block or hinder any part of their use thereof as aforesaid in any way, except that (i) a "post and chain" device with a lock may be maintained on Lot 31-2, installed in or about 1988, in the location shown on the Definitive Plan. . . ." Consent Order § 6; JSUF ¶ 18. The clause authorizes Defendants to install a post and chain device with a lock "provided that a key to the same is always provided to the owners of Lot 24 [Plaintiffs] for their exclusive use." Consent Order § 6.

In Count II of the Complaint, Plaintiffs ask this Court to order the Defendants to reinstall a courtesy gate on a post and chain device as was present in 1988. Plaintiffs allege that the Consent Order prevents Defendants from blocking Plaintiffs' use of their easement except for the post and chain device that was installed on the property in or about 1988. Plaintiffs claim that the post and chain device that was present in 1988 did not extend the entire width of the

easement as it included a courtesy gate that allowed pedestrians to walk through. Plaintiffs contend that Defendants reinstalled the post and chain device; however, Plaintiffs explain that it does not have a courtesy gate for pedestrians, as it now stretches the entire length of the easement.

Alternatively, Defendants maintain that the Consent Order is unambiguous relating to the post and chain device in that there is no courtesy gate exception. Additionally, they argue that they have an interest in excluding a courtesy gate: keeping trespassers out.

The Consent Order does not address the courtesy gate. See generally Ex. 2. As such, the Court cannot consider parol evidence to add another term to this unambiguous agreement. 70 A.L.R. 752 (2015). This Court finds that irrespective as to why the courtesy gate existed historically, the post and chain device and the courtesy gate are two different features, the latter of which the Plaintiffs failed to negotiate for in the Consent Order. Consequently, this Court finds that Plaintiffs do not have the right to install a courtesy gate pursuant to the Consent Order.

C

Post Anchors of Relocated Lighthouse Dock

The relocation of the Lighthouse Dock was contemplated in the Consent Order. JSUF ¶ 12. The Defendants, as owners of Lot 31-2, were required to cooperate with the owners of Lot 24 in the filing of an application to CRMC for the relocation of the Lighthouse Dock to the north of its then current location, to an area as close as possible to the Launching and Retrieval Easement (its eastern terminus) on Lot 31-2 where the same meets the Pond (Relocated Dock). Id. The TL Arnold Action submitted an Assent and Modification Request Form to CRMC to modify the 1995 assent which approved the Lighthouse Dock in the prior location. Ex. 4. The prior assent included a 3x13 walkway leading to the 8x16 floating dock. Ex 19. CRMC

approved the application on December 28, 2011. JSUF ¶ 25. At no point prior to the CRMC approval did the Plaintiffs object to the engineering materials submitted to CRMC. Id. at ¶ 26. Plaintiff James Arnold personally presented the CRMC approval letter to the Town of Charlestown for recording in the land evidence records. JSUF ¶ 27. On May 1, 2012, James Arnold arranged for the dock to be launched at its new location within the Launching and Retrieval Easement at its eastern terminus where it meets the Pond (Relocated Lighthouse Dock[4]). Id. at ¶ 29

In Count III, Plaintiffs seek permission to install two wooden "roughly four to five feet high" posts at the base of the Lighthouse Dock. Plaintiffs allege that the Consent Order permitted them to relocate the Lighthouse Dock to the end of the easement at the shore of the Pond. The dock in question is a floating dock that is accessed by a ramp secured by two four-foot high posts inserted into the ground. Plaintiffs allege that CRMC permitted the installation of posts, and Defendants have refused to allow their installation. Defendants counter that the Consent Order does not contemplate the installation of four- to five-foot posts to secure their floating docks. Defendants contend that the CRMC authorization to rebuild and relocate the dock was silent with respect to the posts.

Here, there is no language in the Consent Order regarding the dock posts. JSUF ¶ 19. The Consent Order defines the existing Lighthouse Dock as a floating dock approximately eight feet wide and sixteen feet long. Consent Order § 4. There is no mention of posts and this Court cannot add such a term to the agreement. See 70 A.L.R. 752. Additionally, when looking at the

[4] Section 4 of the Consent Order defines "Lot 24 Dock," as the "existing 'Lighthouse Dock' benefiting Lot 24 and located on Lot 31-2 approximately 50 ft. south of its boundary with Lot 23, which dock is a 'floating dock' approximately 8 ft. wide and 16 ft. long." Consent Order § 4. The "Relocated Lot 24 Dock" is defined as the Lot 24 Dock as relocated in accordance with the provisions of Section 12 of the Consent Order. Id. at § 5.

surrounding circumstances, it is clear that the Plaintiffs were put on notice and given an opportunity to object to the absence of the dock posts when the DiPrete Engineering Plan submitted to CRMC included a photograph of the existing dock without posts. Tr. at 54; see Ex. 5. CRMC approved the application as submitted. Tr. at 56, 95-96. Plaintiffs never raised concerns during negotiations of the Consent Order regarding this issue or when the plan was submitted. Id. at 138. Moreover, evidence presented at trial established that the Lighthouse Dock had not included posts since December 2009.

When applying the plain and ordinary meaning of the terms and looking at the surrounding circumstances, the Relocated Dock was not required to include any posts pursuant to the Consent Order. Consequently, this Court finds that Plaintiffs do not have the right to reinstall posts on the floating dock.

D

Breach of Contract

The Consent Order requires that a professional surveyor prepare a Definitive Plan to replace the sketch attached to the original Consent Order. JSUF ¶ 30. The Consent Order also states that the Definitive Plan shall be included as an attachment to an amended and restated consent order. Id. Once an amended and restated consent order is completed and in accordance with the Consent Order, the parties agree to dismiss with prejudice their respective claims. Id. at ¶ 31. Nathan D. Lauder was jointly retained on September 23, 2010 to prepare the Definitive Plan. Id. at ¶ 32. The Definitive Plan was prepared and circulated to the parties, and appropriate amendments were made. Id. at ¶ 33. Plaintiffs have withheld the approval of the Definitive Plan, the execution of an amended and restated consent order, and the termination of the Mahony and TL Arnold Actions pending the outcome of this action. Id. at ¶ 34.

Count II of Defendants' counterclaim alleges Plaintiffs have breached the Consent Order by refusing and failing to perform their obligations under the Consent Order. Specifically, Defendants maintain Plaintiffs have failed to fully resolve the consolidated civil actions by, among other things, refusing to acknowledge and accept the agreed-to dimensions of the Launching and Retrieval Easement and a final Definitive Plan consistent with the CRMC-approved location for the Relocated Dock; refusing to execute an amended and restated consent order; and refusing to execute a stipulation of dismissal of the consolidated actions, all as called for by the Consent Order. Plaintiffs do not address Defendants' breach of contract claim in their post-trial material submitted to the Court but deny the allegation in their answer to Defendants' counterclaim.

In a claim for breach of contract, a plaintiff must prove the existence and breach of a contract and that the defendant's breach thereof caused it damages. Petrarca v. Fidelity and Cas. Ins. Co., 884 A.2d 406, 410 (R.I. 2005). The court must make "the predicate findings of offer, acceptance, consideration and breach requisite to determining a breach of contract claim." Gorman v. St. Raphael Academy, 853 A.2d 28, 33 (R.I. 2004). A party establishes a breach of contract claim when that party demonstrates a "violation of a contractual obligation, either by failing to perform one's promise or by interfering with another party's performance." Demicco v. Med. Assocs. of R.I., Inc., No 99-251L 2000 WL 1146532, *2 (D.R.I. July 31, 2000)(citing Black's Law Dictionary 182 (7th ed. 1999)).

Here, it is undisputed that the parties entered into a valid and binding contract, in the form of a Consent Order entered by the Court on July 30, 2010. The Consent Order calls for the joint hiring of a surveyor to prepare the Definitive Plan, a joint application to CRMC for the dock relocation, and the filing of an amended and restated consent order attaching the Definitive

Plan. Consent Order §§ 2, 12; JSUF ¶¶ 20, 30. Section 16 of the Consent Order also provides that "[t]he parties agree to dismiss with prejudice all claims and counterclaims in the above consolidated actions, with the parties to bear their own respective court costs and attorneys' fees." Consent Order § 16. It is also undisputed that Plaintiffs have "withheld approval of the Definitive Plan as prepared by Mr. Nathan D. Lauder [the surveyor], as well as execution of an Amended and Restated Consent Order and termination of the [Mahony and TL Arnold actions] pending the outcome of this action." JSUF ¶ 34. Consequently, this Court finds that Plaintiffs' failure to comply with the terms of the Consent Order constitutes a breach of that Order. The Court reserves further decision pending hearing.

IV

Conclusion

After due consideration of all of the evidence and arguments advanced by counsel before the Court and in their memoranda, the Court finds that Plaintiffs failed to meet their burden of demonstrating their claims. Thus, in its entirety, this Court denies and dismisses all Counts in the Plaintiffs' Complaint.

With respect to Counts I, II, and III of Defendants' counterclaim:

1. Count I: This Court grants the Defendants' request for declaratory relief pursuant to the Uniform Declaratory Judgments Act, § 9-30-1. This Court hereby declares and affirms the rights and obligations unambiguously set forth in the Consent Order dated July 30, 2010 in the consolidated actions of Arnold, et al. v. Mahony, et al., C.A. No. WC-2007-0505 and Arnold, et al. v. Arnold, C.A. No. WC-2008-0826. These rights include, but are not limited to: (a) that the north-south width of the Launching and Retrieval Easement as same crosses Tax Assessor's Plat 7, Lot 31-2 in the Town of

Charlestown shall be fifteen feet (ten feet cleared); (b) that Plaintiffs accept the final Definitive Plan consistent with the CRMC-approved relocation of the Lighthouse Dock as prepared by the surveyor, Mr. Nathan D. Lauder, P.L.S. of Cherenzia & Associates, Ltd. (Ex. 7); (c) that Plaintiffs execute an amended and restated consent order with said Definitive Plan attached thereto; and (d) that all claims and counterclaims in the consolidated Mahony and TL Arnold Actions be dismissed with prejudice.

2. Count II: This Court reserves further decision pending hearing.

3. Count III: This Court directs the Plaintiffs to comply with the terms and conditions of the Consent Order dated July 30, 2010 in the consolidated actions of Arnold, et al. v. Mahony, et al., C.A. No. WC-2007-0505 and Arnold, et al. v. Arnold, C.A. No. WC-2008-0826.

Accordingly, Counsel for the prevailing party shall prepare the appropriate judgment for entry consistent herewith.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	**Arnold v. Arnold, et al.**
CASE NO:	**WC-2012-0379**
COURT:	**Washington County Superior Court**
DATE DECISION FILED:	**May 14, 2015**
JUSTICE/MAGISTRATE:	**Taft-Carter, J.**
ATTORNEYS:	
For Plaintiff:	**Kelly M. Fracassa, Esq.**
For Defendant:	**Joseph V. Cavanagh, III, Esq.** **William R. Landry, Esq.**