Bidgood v. Town of Cavendish, No. 85-2-06 Wrcv (Cohen, J., Sept. 14, 2006)

STATE OF VERMONT
WINDSOR COUNTY, SS.

Paul F. Bidgood, *Appellant*	)	**Windsor Superior Court**
	)	**Docket No. 85-2-06 Wrcv**
	)	
	)	**Appeal from: Vermont**
Town of Cavendish, *Appellee*	)	**Transportation Board**
and	)	**No. T.B. 215 (2003),**
Agency of Natural Resources, Department of	)	**Dismissal on September 15, 2005**
Forests, Parks and Recreation, *Intervenor*	)	**(reported September 23, 2005)**

DECISION AND ORDER REGARDING:
TOWN'S MOTION TO DISMISS
and
INTERVENOR'S MOTION TO DISMISS

Paul F. Bidgood appeals a dismissal decision by the State Transportation Board. He had petitioned the Board for review of a decision by the Town of Cavendish Selectboard not to provide winter maintenance on Bailey Hill Road (TH # 36). The Board voted to dismiss Mr. Bidgood's appeal, based on a reported decision by the Vermont Supreme Court in *Bidgood v. Town of Cavendish*, 2005 VT 64, 16 Vt.L.W. 156 (June 8, 2005).[1] The case is before the Superior Court for review, on the record, under 19 V.S.A. § 5(c). Mr. Bidgood represents himself *pro se*. Attorneys Philip C. Woodward and Marikate E. Kelley represent the Town of Cavendish. Assistant Attorney General Clifford Peterson represents the Intervenor, the Vermont Agency of Natural Resources, Department of Forests, Parks and Recreation.

The question presented is whether Mr. Bidgood may appeal the Selectboard's recent reclassification decision, after he agreed to the very reclassification that he now opposes, and after the Supreme Court affirmed the Superior Court's denial of his motion to rescind the

[1] The Supreme Court issued its initial Opinion on June 8, 2005 (16 Vt.L.W. 156). The Court later issued a revised Opinion on September 15, 2005 (16 Vt.L.W. 327), to reflect the participation of Superior Court Judge Hayes, who was specially assigned to sit on the panel. Thus the Court issued its decision on June 8, 2005, and did not alter the substance of the decision in its later opinion.

settlement agreement and reopen the underlying cases. The issue of winter maintenance on Bailey Hill Road was the primary focus of the earlier litigation, in which Mr. Bidgood and others sought year-round access to their property. In Docket No. 29-1-99 Wrcv, Mr. Bidgood challenged the Town's action of reclassifying the road from Class 3 to Class 4. In Docket No. 436-9-99 Wrcv, he pursued various claims against these appellees and others for failing to provide the winter access he desired. The parties to the earlier litigation entered into a comprehensive Stipulation of Settlement on April 4, 2003, and they amended some parts of their agreement on May 12 and 13, 2003. Superior Court Judge Alan W. Cook then approved the terms of the settlement agreement by issuing two Orders of Dismissal on May 16, 2003.

Within the context of the present litigation, the pertinent terms of the Amended Stipulation of Settlement (i.e. the original agreement dated April 4, 2003, as amended on May 12 and 13, 2003) are as follows:

¶ 3. The Cavendish Selectboard will warn a reclassification hearing to convert T.H. 36 (the portion of T.H. 36 described here is that portion of the highway from the State forest highway to the Bidgood dwelling house) to a Class 3 – 3 season maintenance – town highway. For purposes of this Stipulation, Plaintiffs agree that T.H. 36 is a Class 4 town highway at present. The Cavendish Selectboard cannot guarantee the results of such hearing.

¶ 13. This stipulation is also contingent on a final decision (including any decision on appeal) reclassifying TH 36 to a three-season Class 3 road.

¶ 17. The companion case involving an appeal of reclassification [No. 29-1-99 Wrcv] shall also be dismissed w/ prejudice at the time the case captioned above [No. 436-9-99 Wrcv] is dismissed.

On review of the Superior Court's denial of Mr. Bidgood's attempts to reopen the litigation, the Vermont Supreme Court held that the settlement agreement is part of the final judgment of the court, and that its terms are final and binding, as a matter of *res judicata*. The Supreme Court explained its decision as follows:

¶ 6. We affirm because the doctrine of res judicata precludes Mr. Bidgood from collaterally attacking the validity of the order. "Res judicata bars litigation of a claim or defense if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical." *Kellner v. Kellner*, 2004 VT 1, ¶ 8, 176 Vt. 571, 844 A.2d 743 (mem.) (quotations omitted). Res judicata also bars parties from litigating claims that the parties should have raised in a previous proceeding. *Id*. A settlement agreement that is incorporated into a final judgment can be disturbed pursuant only to the procedures set forth in Vermont Rule of Civil Procedure 60(b). *Id*. ¶¶ 6, 8 (discussing and relying on *Johnston v. Wilkins*, 2003 VT 56, 175 Vt. 567, 830 A.2d 695 (mem.)).

¶ 7. In the present case, the settlement agreement was incorporated into a final order. The parties are identical. The subject matter – reclassification and maintenance of a town highway –

was central to the litigation that the settlement agreement resolved. Thus, Mr. Bidgood''s renewed claims are barred by res judicata, and the final order controls.

Bidgood v. Town of Cavendish, 2005 VT 64, ¶¶ 6-7, 16 Vt.L.W. 327.

The instant case is an appeal of the dismissal decision by the State Transportation Board. The Board's decision was to dismiss Mr. Bidgood's appeal of a decision by the Town of Cavendish Selectboard not to provide winter maintenance on Bailey Hill Road. More specifically, the Town of Cavendish had converted the road from Class 4, to Class 3 with three-season maintenance, under 19 V.S.A. § 302(a)(3)(B). Apparently Mr. Bidgood seeks to require the Town of Cavendish to convert the road to Class 3 with all-season maintenance.

The Town and the Intervenor have both sought dismissal. The Town filed a "Motion to Dismiss" on the grounds of res judicata, collateral estoppel, equitable estoppel, waiver and contract. The Intervenor, the Department of Forests, Parks and Recreation, has also asked for dismissal of the appeal on the grounds of res judicata. The Court's understanding is that the Town and Intervenor actually seek an Order affirming the dismissal by the Transportation Board.

Mr. Bidgood has set forth a variety of theories in opposition to the motions. In applying the Town's grounds for dismissal to Mr. Bidgood's theories, it helps to separate the issues into those that were decided in the previous litigation and those that were not.

Many of Mr. Bidgood's arguments attempt to reopen the earlier cases. One of those earlier cases involved Mr. Bidgood's appeal of the Town's action of reclassifying the road from Class 3 to Class 4. Judge Cook's dismissal of that case essentially upheld the road reclassification to Class 4. In ¶ 3 of the Settlement Agreement, the parties agreed that T.H. 36 was Class 4. Later that year, Mr. Bidgood moved to reopen the earlier litigation, but Judge Teachout denied his motion, and the Supreme Court later affirmed that denial. Therefore, the Class 4 designation was clearly established as a result of the earlier litigation.

Mr. Bidgood cannot use the instant case to reopen the earlier litigation. He cannot continue to question the Town's decision to reclassify T.H. 36 as Class 4, nor can he continue to question Judge Teachout's decision to deny his motion to reopen the case. Given the Supreme Court's decision dated June 8, 2005, those issues are settled, as a matter of res judicata.

Mr. Bidgood also seeks review of the Town's decision (on or about November 12, 2003) to reclassify T.H. 36 as a Class 3, three-season road. As explained above, the Town's decision upgraded the road from Class 4. Nevertheless, Mr. Bidgood appealed to the Transportation Board, seeking review of the Town's decision not to provide winter maintenance.

Mr. Bidgood argues correctly that the Town's reclassification decision (in November 2003) was not part of the earlier litigation. Although both involved reclassification of T.H. 36, they occurred at different times and under different circumstances. Even though the earlier litigation confirmed a reclassification to Class 4, that result did not preclude a further reclassification in

2003. See *In re Bill*, 168 Vt. 439, 445 (1998) (courts do not apply common law rules of res judicata to highway proceedings).

Here, however, the earlier litigation resulted in a Settlement Agreement including a provision that the Town would take steps to reclassify T.H. 36 to a Class 3, three-season maintenance town highway. The Supreme Court's decision confirmed that the Settlement Agreement is a valid and binding contract. The Settlement Agreement included a provision calling for the Town to take steps to reclassify T.H. 36 from Class 4 to Class 3 with three-season maintenance. The Settlement Agreement also included a provision that the stipulation was contingent on a final decision (including any decision on appeal) reclassifying T.H. 36 to a three-season Class 3 road.

Given these provisions, the Court agrees with the Town that Mr. Bidgood's appeal of the reclassification decision violates the spirit of the Settlement Agreement. After agreeing to settle the litigation, Mr. Bidgood's pursuit of his appeal could upset the contingency set forth in ¶ 13. His actions violate the covenant of good faith and fair dealing that exists within every contract.

An underlying principle implied in every contract is that each party promises not to do anything to undermine or destroy the other's rights to receive the benefits of the agreement. *Shaw v. E. I. Dupont de Nemours & Co.*, 126 Vt. 206, 209, 226 A.2d 903, 906 (1966). The implied covenant of good faith and fair dealing exists to ensure that parties to a contract act with "faithfulness to an agreed common purpose and consistency with the justified expectations of the other party." Restatement (Second) of Contracts § 205 comment a (1981).

Carmichael v. Adirondack Bottled Gas Corp., 161 Vt. 200, 208 (1993). In this case, Mr. Bidgood's pursuit of the appeal undermines the Town's right to receive the benefits of their agreement. The Town has attempted to fulfill the terms of the agreement. Based on the covenant of good faith and fair dealing, Mr. Bidgood is contractually barred from undermining the agreement by pursuing this appeal.

ORDER

The decision by the State Transportation Board to dismiss Mr. Bidgood's appeal is AFFIRMED. The terms of his earlier settlement agreement preclude him from objecting to the Town of Cavendish Selectboard's decision to classify and maintain Bailey Hill Road as a three-season Class 3 highway.

Dated at Woodstock, Vermont, this ____ day of _____, 2006.

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Hon. William D. Cohen,

Presiding Judge