DOCKET NO.: UWY CV 13 5016462 S	:	SUPERIOR COURT
THOMAS ARRAS, ET AL	:	J. D. OF WATERBURY
V.	:	AT WATERBURY
REGIONAL SCHOOL DISTRICT #14, ET AL	:	JANUARY 29, 2014

MEMORANDUM OF DECISION ON MOTION FOR CONTEMPT AND STAY OF IMPLEMENTATION, OR TEMPORARY INJUNCTION (#140)

On January 13, 2014, the court held a hearing concerning the plaintiffs' Motion Pendente Lite For Order Holding Defendants In Contempt And Compelling Defendants To Stay Implementation Of The Renovation Project; Or, In The Alternative, Motion For Order Holding Defendants In Contempt And For Issuance Of A Temporary Injunction Precluding Implementation Of The Renovation Project (#140) (motion for contempt). The defendants filed objections to the motion for contempt, to which the plaintiffs replied. After consideration of the parties' arguments, the court issues this memorandum of decision.

I

Background

The return date in this matter was August 20, 2013. In their revised complaint (#110), the plaintiffs, Thomas Arras, et al, who allege that they are homeowners, taxpayers, and residents of the Town of Woodbury or the Town of Bethlehem, which are parts of Regional School District No. 14 (Region 14), allege that the defendants[1] failed to publish legal notices to warn residents concerning a June 18, 2013 referendum on the question of expending $63.8 million for renovating the Nonnewaug High School (renovations). They seek a declaration that the results of

[1]The defendants include Region 14, the Towns of Woodbury and Bethlehem, and various representatives thereof. For ease of reference, the court below refers to the Towns and their representatives as the "Town defendants."

the referendum are null and void, and a permanent injunction against any funding and implementation of the resolutions approved at the referendum, including the renovations.

Another action, *Town of Woodbury* v. *Board of Education, Regional School District No. 14*, Docket No. LLI CV 13 6009045 S, in the Superior Court for the judicial district of Litchfield (Litchfield action), challenged the same proposed renovations. Region 14 is a defendant in that case also. In that matter, after trial, the court (*Pickard, J.*) issued a decision on December 9, 2013, declaring the results of the referendum to be valid and declaring that Region 14 and the Towns may act in reliance on the results and proceed with the building project at issue in accordance with General Statutes § 10-56. No appeal ensued, making that court's decision a final judgment in that matter.

In the motion for contempt, the plaintiffs argue that the defendants reneged on an agreement not to proceed on the renovations. In particular, at page 1, they allege, "The defendants told the court that they had not taken any action to proceed with the renovation project, and agreed, on the record, to the court, that they would not do so." In support, they cite remarks by counsel for the Town defendants in an excerpt from page 22 of the transcript of September 23, 2013, when the parties appeared before the court (*Taylor, J.*).[2] Without citation to the record, they also allege that the attorney for Region 14 also joined in affirming the "agreement" on multiple occasions before the court. See motion for contempt, p. 2.

The plaintiffs accuse defense counsel of lying and perpetuating a fraud on the court, or, at the very least, reneging on the agreement and changing their mind. See motion for contempt, p. 2. As support for this contention, the plaintiffs cite a newspaper report of a December 19, 2013

---

[2]The court discusses this transcript below.

meeting of Region 14's building committee (Region 14 meeting), which the court discusses further below.

In response, the Town defendants assert that it defies logic to assert that the Region 14 meeting constituted contempt or violation of an agreement, and that the meeting did not involve conduct by any of the Town defendants, who were not even participants there. Region 14 argues that, due to the plaintiffs' express refusal to enter into the proposed agreement which was discussed in court, there was no binding agreement prohibiting any action by any party, and that even the proposed agreement did not contain the terms alleged by the plaintiffs. In addition, it contends that it acted in good faith to honor the terms of the proposed agreement; that it did not violate any terms of any agreement, proposed or otherwise; and that with the issuance of a final decision in the Litchfield action, there is no bar on Region 14 from taking any action on the renovations.

All defendants take exception to the plaintiffs' accusations that they and their counsel have lied, reneged, or perpetrated a fraud on the court.

II

Discussion

A

Contempt

"Contempt is a disobedience to the rules and orders of a court which has power to punish for such an offense. . . . [A]nalysis of a judgment of contempt consists of two levels of inquiry. First, [the court] must resolve the threshold question of whether the underlying order constituted a court order that was sufficiently clear and unambiguous so as to support a judgment of

contempt. . . . This is a legal inquiry. . . . Second, if . . . the underlying court order was sufficiently clear and unambiguous, . . . the trial court [exercises] its discretion in issuing, or refusing to issue, a judgment of contempt, which includes a . . . determination of whether the violation was wilful or excused by a good faith dispute or misunderstanding." (Citations omitted; internal quotation marks omitted.) *In re Leah*, 284 Conn. 685, 692-94, 935 A.2d 1021 (2007).

"When the conduct underlying the alleged contempt does not occur in the presence of the court, a contempt finding must be established by sufficient proof that is premised upon competent evidence presented to the trial court in accordance with the rules of procedure as in ordinary cases." (Internal quotation marks omitted.) *Bryant* v. *Bryant*, 228 Conn. 630, 637, 637 A.2d 1111 (1994).

"A finding of contempt is a question of fact . . . . To constitute contempt, a party's conduct must be wilful. . . . Noncompliance alone will not support a judgment of contempt. . . . An order of the court must be obeyed until it has been modified or successfully challenged." (Internal quotation marks omitted.) *Dickinson* v. *Dickinson*, 143 Conn. App. 184, 188, 68 A.3d 182 (2013).

"[A] court may not find a person in contempt without considering the circumstances surrounding the violation to determine whether such violation was wilful. . . . [A] contempt finding is not automatic and depends on the facts and circumstances underlying it." (Internal quotation marks omitted.) Id., 189.

"Unsworn representations of counsel are not evidence. . . . A judgment of contempt cannot be based on representations of counsel in a motion, but must be supported by evidence produced in court at a proper proceeding. . . ." (Citation omitted; internal quotation marks

omitted.) Id., 189-90.

As discussed above, in their motion for contempt, the plaintiffs cite page 22 of the transcript of proceedings before the court on September 23, 2013. This excerpt must be viewed in context. As the following summary reflects, no court order was entered.

As reflected on page 20 of the transcript[3], the court (*Taylor, J.*) suggested entering a temporary injunction and waiting for the decision in the Litchfield action. After further remarks by the court and counsel for the various parties, the following colloquy ensued:

"Atty Stevens (counsel for Woodbury defendants): Nobody has done anything in light of this action.

The Court: Can there be an agreement on that issue?

Atty Stevens: There already is, Your Honor. If we need to put it on the record. Certainly, I'll say that the Town of Woodbury and the defendants I represent, have absolutely no intention of raising one hand and spending one penny unless and until there is a declaratory judgment action telling us that the vote has to be validated or has to be done again, whatever. We are doing nothing.

Atty DiPentima (counsel for Bethlehem defendants): We are not going to spend a dime." See Transcript, p. 22.

Thereafter, the court suggested reconvening after the lunch recess "to see whether or not there is language that can be agreed upon just to keep a place holder so that nothing happens to anyone's detriment while some of these issues unfold." See transcript, p. 23.

---

[3]References are to the Transcript of proceedings in court on September 23, 2013. See Region 14 objection (#149), Attachment A.

Attorney Stevenson, counsel for the plaintiffs, then stated: "Well, I have no problem in discussing that further, but I definitely would want to see something in writing and enforceable by the court." See Transcript, p. 23.

Attorney Sommaruga, counsel for Region 14, stated "We can discuss it. Obviously I could speak with my client about it." See Transcript, p. 23. After the matter was passed, it was recalled and the parties reported to the court what Attorney Stevens termed as an "agreement in principle that we need to run by our respective clients. So what we would like to report to the Court is that we are going to check in with our clients, try to get something circulated in writing that would eventually ask the Court to issue a contrary order that we think will resolve the issues that have been discussed." See Transcript, pp. 25-26. Attorney Stevens then stated that it was anticipated that, based on a written stipulation, the court would issue a temporary order. See Transcript, p. 26.

Thereafter, a proposed written agreement was circulated among the parties' counsel, which provided for a stay of this action pending a final adjudication of the Litchfield action. See Region 14 objection (#149), Attachment B. The plaintiffs did not agree thereto and it never went into effect. By memorandum of decision (#137) and order (#105.10) dated November 19, 2013, this court granted a motion for stay of this action pending the resolution of the Litchfield action. As noted above, the court's decision in that matter was issued on December 9, 2013.

The Voices newspaper article attached to the motion for contempt indicates that Region 14's building committee met on December 19, 2013, to review the status of the renovation project. The article states that "[w]ith the [Litchfield] case over, the board determined it was free to move on the project and the committee decided to reconvene." Reference was also made to

this action. Defendant Goeler, the Superintendent of Region 14, is quoted as having stated that "[t]here's no action from that case or any ruling that tells us we are not in a position to move forward." See Voices article, dated December 25, 2013, submitted with plaintiffs' motion for contempt.

After review, the court concludes that no court order was entered in this matter which prohibited the defendants from taking action concerning the renovations. The September 23, 2013 statements in court by counsel, including that "[n]obody has done anything in light of this action," and indicating that they had no intention of spending funds "unless and until there is a declaratory judgment action telling us that the vote has to be validated or has to be done again, whatever" (see Transcript, p. 22), were made in the course of discussion of a proposed agreement for the entry of a temporary injunction, which plaintiffs' counsel later specifically stated she wanted to see in writing, to ensure that it would be enforceable by the court. See Transcript, p. 23. Such an agreement did not come to fruition.

In the absence of evidence, the plaintiffs' references to off the record statements (see plaintiffs' reply (#150), p. 1) are unavailing. The plaintiffs have not met their burden to prove that there was a court order that would support a judgment of contempt, let alone a violation thereof. In the absence of a court order, the second level of inquiry, as to whether a wilful violation occurred, is unnecessary. See *In re Leah*, supra, 284 Conn. 692-94.

B

Temporary Injunction

As noted above, in the alternative, the plaintiffs seek a temporary injunction or order staying implementation of the renovations. In order to prevail on an application for a temporary or preliminary injunction, the movant must show (1) likelihood of success on the merits; (2) lack

of an adequate remedy at law; (3) irreparable injury; and (4) that a balancing of the equities favors granting the injunction. See *Waterbury Teachers Association* v. *Freedom Of Information Commission*, 230 Conn. 441, 446, 645 A.2d 978 (1994); *Griffin Hospital v. Commission on Hospitals and Health Care*, 196 Conn. 451, 457-58, 493 A.2d 229 (1985).

The plaintiffs seek the issuance of a temporary injunction based on the same alleged agreement which was the subject of the September 23, 2013 court appearance before Judge Taylor. As discussed above, the agreement did not come to fruition and, if it had, it would have ended when the declaratory ruling after trial in the Litchfield action became a final judgment.

Besides the Transcript excerpt and the December 25, 2013 newspaper article, the plaintiffs presented no other evidence. The plaintiffs have not met their burden to show a likelihood of success on the merits. Accordingly, the court need not consider the other aspects of the required showing for the issuance of a temporary injunction.

C

Fraud On The Court

"The 'fraud on the court' doctrine is materially different from . . . fraud or misconduct on an adverse party. . . . '[F]raud upon the court' as distinguished from fraud on an adverse party is limited to fraud which seriously affects the integrity of the normal process of adjudication. . . . [F]raud on the court must constitute egregious misconduct . . . such as bribery of a judge or jury or fabrication of evidence by counsel. . . . It is not fraud between the parties or fraudulent documents, false statements or perjury. . . . When alleging a claim of fraud on the court, the plaintiff must show by clear and convincing evidence that there was fraud on the court . . . ." (Citations omitted; internal quotation marks omitted.) *Duart* v. *Dept. of Correction*, 116 Conn. App. 758, 771-72 n.9, 977 A.2d 670 (2009), affirmed, 303 Conn. 479, 34 A.3d 343 (2012).

Fraudulent behavior by attorneys "contribute[s] to the deterioration of civility and collegiality and invite[s] the scorn of the public on the bar." *Nelson* v *Charlesworth*, 82 Conn. App. 710, 715, 846 A.2d 923 (2004).

The plaintiffs have not shown by the evidence they have presented, including their citation to the September 23, 2013 hearing transcript, that opposing counsel and the defendants lied to and perpetrated fraud on the court.

CONCLUSION

For the foregoing reasons, the plaintiffs' motion for contempt is denied. It is so ordered.

BY THE COURT

Robert B. Shapiro

ROBERT B. SHAPIRO
JUDGE OF THE SUPERIOR COURT

Copies mailed on 1/29/14 to:
✓ Atty. Deborah G. Stevenson
✓ Pullman & Comley LLC
✓ Slavin, Stauffacher & Scott, LLC
✓ Guion, Stevens & Rybak, LLP
✓ Reporter of Judicial Decisions
by Deputy Chief Clerk

ORDER 415596

DOCKET NO: UWYCV135016462S

SUPERIOR COURT

ARRAS,THOMAS Et Al
V.
REGIONAL SCHOOL DISTRICT NUMBER 14 Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

1/29/2014

ORDER

ORDER REGARDING:
12/30/2013 140.00 MOTION FOR CONTEMPT

The foregoing, having been heard by the Court, is hereby:

ORDER: DENIED

The motion is denied in accordance with the Memorandum of Decision on file.

Copies of Memo of Decision mailed on 1/29/2014 to counsel of record and Reporter of Jud. Decisions

415596

Judge: ROBERT B SHAPIRO
Processed by: Richard Haas

ORDER 415596

DOCKET NO: UWYCV135016462S

SUPERIOR COURT

ARRAS,THOMAS Et Al
V.
REGIONAL SCHOOL DISTRICT NUMBER 14 Et Al

JUDICIAL DISTRICT OF WATERBURY
AT WATERBURY

1/29/2014

ORDER

ORDER REGARDING:
12/30/2013 140.00 MOTION FOR CONTEMPT

The foregoing, having been heard by the Court, is hereby:

ORDER: DENIED

The motion is denied in accordance with the Memorandum of Decision on file.

Copies of Memo of Decision mailed on 1/29/2014 to counsel of record and Reporter of Jud. Decisions

415596

Judge: ROBERT B SHAPIRO
Processed by: Richard Haas