DOCKET NO. KNL-CV-18-6036493-S	SUPERIOR COURT
KATHLEEN TRACEY, ET AL	J.D. OF NEW LONDON
V.	AT NEW LONDON
MIAMI BEACH ASSOC., A/K/A MIAMA BEACH ASSOCIATION	JANUARY 15, 2020

MEMORANDUM OF DECISION

I. Introduction

The plaintiffs, Kathleen Tracey, Jerry Vowles, Dee Vowles, and Robert Breen, commenced this action by complaint, dated August 2, 2018, against the defendant Miami Beach Assoc. a/k/a Miami Beach Association (the association). The defendant is an entity created by a special act of the state legislature, approved July 1, 1949, and located in the town of Old Lyme. The plaintiffs, respectively, own properties in Old Lyme, Connecticut in an area commonly known as Sound View. The plaintiffs allege that the defendant has hindered and violated their right of access to Miami Beach, located in the town of Old Lyme, Connecticut, in violation of a prior judgment of this court in *Vitello* v. *Corsino*, Superior Court, judicial district of New London, Docket No. 20902 (February 18, 1953, *Troland, J.*). The present case was heard by the court on July 24, 2019. The parties subsequently filed simultaneous post-trial briefs and the defendant filed a reply brief.

II. Facts and Procedures

In the revised complaint, the plaintiffs allege the defendant's installation of a fence in 2017 restricts their access to a sandy beach, known as Long Island Avenue but more commonly referred to as Miami Beach.[1] The plaintiffs claim the association's installation of the fence

[1] For clarity, the beach will be referred to as Miami Beach in this memorandum of decision unless it is in the context of the 1953 action, where it will be referred to as Long Island Avenue, because the beach was not referred to as Miami Beach in that case.

1/15/20 electronic notice sent

115.00

violates a 1953 judgment of this court in *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902. The 1953 judgment provided an order for permanent removal of a similar boundary fence installed by the defendant in 1952. The plaintiffs also claim that the prior judgment ordered the defendant to refrain from restricting access to Miami Beach in any other way, but that the defendant initiated a program, after the installation of the fence in 2017, requiring persons using the beach to have permits or pay fees. The plaintiffs claim this program is an impermissible restriction on the public's right to free access to the beach.

The defendant denies the allegations and claims it is permitted to restrict access to Miami Beach. The defendant recognizes the prior judgment in *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902, but disagrees as to (1) whether, or to what extent, the 1953 judgment is applicable to this case; (2) whether the prior judgment found Miami Beach is dedicated for public use; and (3) claims, in the alternative, the restrictions are reasonable.

Many of the facts are not in dispute. The area of land at issue is Miami Beach, previously known as and referred to in deeds of conveyance as Long Island Avenue. It consists of a strip of sandy beach bordered southerly by the waters of Long Island Sound and northerly by roadways or private residential properties located within the association. The plaintiffs own properties on Hartford Avenue, which extends down to the high water line, although the last portion of the avenue adjacent to the high water line of Long Island Sound is a narrow stretch of sandy beach. This beach portion of Hartford Avenue, also known as Sound View Beach, abuts Miami Beach.

In 2017, the defendant installed a wire boundary fence along the eastern boundary of Miami Beach, which is abutting and adjoining Hartford Avenue, to a point above or near the high water mark of Long Island Sound. Presently, access to Miami Beach is primarily through an attended gate in the fence, where members or employees of the association regulate

admission to the beach. The general public has the right to traverse the area of Miami Beach below the high water mark, which remains unimpeded by the 2017 fence.[2] After 2017, any and all persons who intend to stay on the beach for recreation, leisure, sport, or socializing are subject to restrictions, which include possession of a permit or payment of fees.

The parties presented evidence addressing the prior judgment and the current restrictions on the public use of Miami Beach. Accordingly, the court examines the evidence chronologically.

A. The 1953 Judgment

In 1952, individual residents of the adjacent Sound View Beach neighborhood brought an action against the present defendant, amongst others, claiming the erection of a fence composed of wire by the association was intended to and restricted public access to Miami Beach, known at the time as Long Island Avenue. As previously noted, in 1953, the court entered judgment in favor of the plaintiffs. *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902.

The *Vitello* action was brought in three counts. (Ex. 2, Complaint, p. 1-3). In the first count, the plaintiffs claimed a wrongful interference with their free use of Long Island Avenue resulting from the defendant's erection of an iron fence, together with wood pilings and a wood fence, to the mean high water mark. Id. In count two, the plaintiffs claimed a prescriptive right of use of Long Island Avenue. Id. In count three, the plaintiffs alleged continuous and uninterrupted use of Long Island Avenue, without abandonment of Long Island Avenue the public way. Id.

[2] There was credible testimony that, after 2017, persons walking on the beach were confronted by the defendant's security, employees, or agents and asked about their intended use of the beach. The defendant installed a sign at the gateway to the beach, after the commencement of this action, permitting individuals to walk through, but not stay on, the beach.

The court entered judgment in favor of the plaintiffs on counts one and three as follows: "The Court, having heard the parties, finds the issues upon the First Count for the plaintiffs enumerated therein, and also finds the issues for all of the plaintiffs upon the Third Count, and at the request of the plaintiffs specially sets forth the facts found as follows:

"That Harry J. Hilliard, formerly of the Town of Old Lyme, was the owner of the land now known and designated as Swan Avenue, Hartford Avenue, Portland Avenue, and Pond Road, and the adjacent streets and the land abutting on those thoroughfares, except for land east of Swan Avenue, and that during his lifetime he developed this land laying it out in the roads and streets mentioned, and with building lots adjacent thereto; and that in selling these lots he created certain private rights pertaining to the land sold and the use of the strip of beach running westerly from Hartford Avenue, so-called, and known as Long Island Avenue, and that in addition to that during his lifetime and prior to the year 1941 he dedicated for public use the strip of land known as Long Island Avenue, and that said Long Island Avenue is bounded as follows . . . and that this dedication for such use by the said Harry J. Hilliard was accepted by the unorganized public and has been continuously used and enjoyed by the public down to the date of the beginning of this action.

"As a conclusion of law from these facts, the Court finds the issues on the Third Count for all the plaintiffs." *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902.

The trial court entered the following orders granting injunctive and declaratory relief. The court orders provided in relevant part: "WHEREUPON, it is adjudged that the defendants and their servants and agents be, and they are hereby enjoined . . . from maintaining and establishing after the 29th day of May, 1953 a steel and wire fence across said Long Island Avenue from the intersection of Long Island Avenue with the west line of Hartford Avenue in said Town of Old Lyme; and it is further adjudged that the defendants and their servants and

agents be, and they are hereby ordered . . . to remove from the said Long Island Avenue the said steel and wire fence which they have erected . . . and it is further adjudged that the defendants and their servants and agents be, and they are hereby enjoined . . . *from interfering with the rights of the plaintiffs and the unorganized public to free entry and egress, and to free and unimpeded use and enjoyment of said Long Island Avenue along its entire length and width, from now henceforth* . . . ." (Emphasis added). Id. The judgment of the court was entered on February 18, 1953, and no appeal was taken from this final judgment.

B. The 2017 Fence Installation

The plaintiff Kathleen Tracey is the owner of property on Hartford Avenue, in the town of Old Lyme, Connecticut. For over a decade, Tracey and her family or friends frequently used and enjoyed Miami Beach for recreation and leisure. She testified that during that time, Miami Beach was an open and unobstructed sandy beach adjacent to Hartford Avenue. Tracey testified that after the summer season ended in 2017, a wire fence with a gated entrance was installed on the boundary line of Miami Beach. The fence restricted access to the beach. The subsequent imposition of fees and permits restricted the types of use and free use of the beach.

The plaintiff Robert Breen, also an owner of property on Hartford Avenue, testified that he spent his summers at a family home in the Sound View neighborhood and they regularly used and enjoyed Miami Beach. He testified that from his earliest recollection, there was free and unimpeded access to Miami Beach. He testified that members of the public regularly used the beach for recreation and leisure. He stated that during his lifetime, until 2017, there was no boundary fence restricting access to Miami Beach. Since the imposition of the fees and permits, he has not used or enjoyed Miami Beach.

The defendant offered the testimony of several association residents. Mark Mongiello has served as a director, officer, and president of the board of governors of the association for

many years. Mongiello explained that, prior to the installation of the fence, individuals using the beach acted disrespectfully and abusively. The defendant also offered the testimony of Chris Calvanese and Sandra Manafort, association residents, who similarly testified that the conduct of the persons using the beach had deteriorated over the years. The court finds that, on occasion, unknown persons trespassed onto private residential property adjacent to the beach. In addition, some users of the beach discarded garbage and engaged in misconduct, including public drunkenness, public urinating, fighting, and sexual relations on the beach. In response to this conduct, the defendant installed the fence and began charging fees or requiring permits as part of a "Clean Beach Program." Mongiello explained that the program was initiated to better manage the conduct, cleanliness, and safety of the beach.

Pursuant to the program, there were an array of permissible admissions to the beach contingent on the individual's residence or intended use of the beach. Residents of the town of Old Lyme were required to show proof of residency, and, in return, were provided admission to use the beach. The residents of Sound View, which included the plaintiffs in this action, could purchase a pass for a fee. Members of the general public, who are not residents or owners of property in the town of Old Lyme were required to pay a fee.[3] The defendant's new oversight of and restrictions to access and use of the beach were part of the "Clean Beach Program."

In addition, Terry DeVito, a resident of the association for twenty-five years and the tax collector and treasurer of the association for twenty-two years, testified to the costs of the "Clean Beach Program," including start-up and recurring expenses. These expenses included retention of a management consultant to initially organize and operate the program, wages for employees working the gate verifying passes and collecting usage fees, distribution of garbage

[3] The fees in 2019 were $10 per adult, $5 per child aged ten through seventeen, and free for children under ten years old.

bags to beach users, and wages for security personnel. She testified that the association's income included funds received from the town of Old Lyme[4] plus additional income produced by the funds generated through the program from the permit and admission fees. She testified that in 2017 and 2018, the program operated at a deficit.

III. Discussion

The plaintiffs seek injunctive relief that the defendant be ordered to remove the 2017 fence and be enjoined from charging fees and issuing permits for use of the beach, and a declaratory judgment finding that the defendant's actions preventing the plaintiffs' use of Miami Beach are in violation of previous court orders.

A. Standard and Burden of Proof

The general burden of proof in civil actions is on the plaintiff, who must prove all the essential elements of the cause of action by a fair preponderance of the evidence. *Gulycz* v. *Stop & Shop Cos.,* 29 Conn. App. 519, 523, 615 A.2d 1087, cert. denied, 224 Conn. 923, 618 A.2d 527 (1992). "The [fact-finding] function is vested in the trial court with its unique opportunity to view the evidence presented in a totality of the circumstances, i.e., including its observations of the demeanor and conduct of the witnesses and parties . . . ." (Internal quotation marks omitted). *Cavolick* v. *DeSimone,* 88 Conn. App. 638, 646, 870 A.2d 1147, cert. denied, 274 Conn. 906, 876 A.2d 1198 (2005).

"[F]inal judgments are . . . presumptively valid . . . and collateral attacks on their validity are disfavored." (Internal quotation marks omitted.) *Sousa* v. *Sousa*, 322 Conn. 757, 771, 143 A.3d 578 (2016). See also *Cohen* v. *Cohen*, 327 Conn. 485, 502, 176 A.3d 92 (2018)

[4] DeVito testified that the town of Old Lyme provides grants to support beaches located in the town, including Miami Beach. She further testified that the grant to the association in 2018 and 2019 was in the sum of approximately $19,000 to $20,000 annually.

(stating that "[c]ollateral attacks on judgments are strongly disfavored"). "The reason for the rule against collateral attack is well stated in these words: The law aims to invest judicial transactions with the utmost permanency consistent with justice." (Internal quotation marks omitted.) *Investment Associates* v. *Summit Associates, Inc.*, 309 Conn. 840, 858, 74 A.3d 1192 (2013). "It has long been accepted that a system of laws upon which individuals, governments and organizations rely to resolve disputes is dependent on according finality to judicial decisions. . . . The convention concerning finality of judgments has to be accepted if the idea of law is to be accepted . . . . [A] party should not be able to relitigate a matter which it already has had an opportunity to litigate." (Citation omitted; internal quotation marks omitted.) *Marone* v. *Waterbury*, 244 Conn. 1, 11, 707 A.2d 725 (1998). Once a final judgment has been issued, "it is within the equitable powers of the trial court to fashion whatever orders [are] required to protect the integrity of [its original] judgment" including injunctive relief. (Internal quotation marks omitted.) *Rocque* v. *Light Sources, Inc.*, 275 Conn. 420, 433, 881 A.2d 230 (2005). See also *Commissioner of Health Services* v. *Youth Challenge of Greater Hartford, Inc.*, 219 Conn. 657, 670, 594 A.2d 958 (1991) (recognizing that "[c]ourts have in general the power to fashion a remedy appropriate to the vindication of a prior . . . judgment" [internal quotation marks omitted]).

B. Enforcement of 1953 Judgment

In the present case, the plaintiff relies on the 1953 judgment of this court that found that Harry J. Hilliard, the defendant's predecessor in title to Miami Beach, dedicated the beach to public use and the unorganized public accepted this dedication. The defendant claims, notwithstanding the 1953 judgment, it owns Miami Beach and has the right to restrict access or use thereto.

The plaintiffs rely on the well-established principles of res judicata and collateral estoppel for the position that the defendant cannot collaterally attack the 1953 judgment. The concepts of res judicata and collateral estoppel are intended to prevent the relitigation of legal issues or claims. "Claim preclusion, sometimes referred to as res judicata, and issue preclusion, sometimes referred to as collateral estoppel, are first cousins. Both legal doctrines promote judicial economy by preventing relitigation of issues or claims previously resolved." *Ventres* v. *Goodspeed Airport, LLC*, 301 Conn. 194, 205, 21 A.3d 709 (2011).

"The doctrine of res judicata holds that an existing final judgment rendered [on] the merits without fraud or collusion, by a court of competent jurisdiction, is conclusive of causes of action and of facts or issues thereby litigated as to the parties or their privies in all other actions in the same or any other judicial tribunal of concurrent jurisdiction. . . . If the same cause of action is again sued on, the judgment is a bar with respect to any claims relating to the cause of action [that] were actually made or [that] might have been made." (Internal quotation marks omitted.) *Wellswood Columbia, LLC* v. *Hebron*, 327 Conn. 53, 65, 171 A.3d 409 (2017). "[T]he purposes of res judicata [are] promoting judicial economy, minimizing repetitive litigation, preventing inconsistent judgments and providing repose to parties . . . ." *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, 300 Conn. 325, 350, 15 A.3d 601 (2011).

"Under the doctrine of res judicata, or claim preclusion, a former judgment on a claim, if rendered on the merits, is an absolute bar to a subsequent action on the same claim." (Internal quotation marks omitted.) *DeMilo & Co.* v. *Commissioner of Motor Vehicles*, 233 Conn. 281, 292, 659 A2d 162 (1995). Under res judicata, "a final judgment that is rendered by a court of competent jurisdiction is *conclusive* of the rights of the parties in the same or any other judicial tribunal." (Emphasis in original.) *Seaboard Surety Co.* v. *Waterbury*, 38 Conn. Supp. 468, 471, 451 A.2d 291 (1982).

"Res judicata bars the relitigation of claims actually made in the prior action as well as any claims that might have been made there. . . . Public policy supports the principle that a party should not be allowed to relitigate a matter which it already has had an opportunity to litigate." (Citation omitted; internal quotation marks omitted.) *Wheeler* v. *Beachcroft*, 320 Conn. 146, 157, 129 A.3d 677 (2016). "Generally, for res judicata to apply, four elements must be met: (1) the judgment must have been rendered on the merits by a court of competent jurisdiction; (2) the parties to the prior and subsequent actions must be the same or in privity; (3) there must have been an adequate *opportunity to litigate the matter fully*; and (4) the same underlying claim must be at issue." (Emphasis added.) Id., 156-57.

Collateral estoppel operates against either the same parties as previously litigated the issue or those in privity with them. *Ventres* v. *Goodspeed Airport, LLC*, supra, 301 Conn. 206. "In determining whether privity exists, we employ an analysis that focuses on the functional relationships of the parties. Privity is not established by the mere fact that persons may be interested in the same question or in proving or disproving the same set of facts. Rather, it is, in essence, a shorthand statement for the principle that collateral estoppel should be applied only when there exists such an identification in interest of one person with another as to represent the same legal rights so as to justify preclusion." Id., 207.

In this case, the judgment was rendered based upon findings of fact by a court of competent jurisdiction. The parties do not need to be identical, but rather in privity. *Girolametti* v. *Michael Horton Associates, Inc.*, 332 Conn. 67, 76, 208 A.3d 1223 (2019) (stating that privity is an element of res judicata defined as "such an identification in interest of one person with another as to represent the same legal rights" [internal quotation marks omitted]); *Wheeler* v. *Beachcroft*, supra, 320 Conn. 156-57. The defendant is the same in the 1953 judgment and the pending action. The plaintiffs in the 1953 action were residents of Sound View, as are the

plaintiffs in this action, and respectively claim their access to Miami Beach has been restricted by the defendant's installation of a fence on the boundary. There is no evidence that the parties, particularly the defendant, were not presented an opportunity to litigate fully the controversy in 1953.

"To determine whether claims are the 'same' for res judicata purposes, this court has adopted the transactional test." *Wheeler* v. *Beachcroft*, supra, 320 Conn. 159. To determine whether the cases are the "same" the court must determine "[w]hat factual grouping constitutes a transaction, and what groupings constitute a series, [which] are 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 or business understanding or usage. . . . [E]ven though a single group of facts may give rise to rights for several different kinds of relief, it is still a single cause of action. . . . In applying the transactional test, we compare the complaint in the [present] action with the pleadings and the judgment in the earlier action." (Citations omitted; internal quotation marks omitted.) Id., 159-60.

In the 1953 action, the plaintiffs claimed a wrongful interference with their free use of Long Island Avenue, now known as Miami Beach, in count one and alleged continuous and uninterrupted use of Long Island Avenue in count three. The court found in favor of the plaintiffs on both counts. In this action, the plaintiffs claim the right to unrestricted use of the same beach as previously determined in 1953. In sum, present controversy is substantially similar to the 1953 litigation; the facts and claims for unrestricted use of Miami Beach, as a public beach, are identical. The only distinction between the cases is the defendant's recent additional restriction on access to the beach by imposition of fees and permits. The court finds the permits and fees to be an equivalent restriction to access to or use of the beach. Under the

present circumstances, the permit and fee requirements, as a condition of admission, are as restrictive as a physical boundary fence.

As applies to both res judicata and collateral estoppel, trial courts have some discretion in determining the application of the doctrines. Our Supreme Court has said, and this court recognizes, that "[t]he doctrines of preclusion . . . should be flexible and must give way when their mechanical application would frustrate other social policies based on values equally or more important than the convenience afforded by finality in legal controversies." (Internal quotation marks omitted.) *Lighthouse Landings, Inc.* v. *Connecticut Light & Power Co.*, supra, 300 Conn. 345. See also *Isaac* v. *Truck Service, Inc.*, 253 Conn. 416, 423, 752 A.2d 509 (2000).

The defendant offers no evidence of any substantive legal change in the terms of the dedication of Miami Beach since the 1953 judgment. The evidence presented in this case fails to convince the court that the exercise of discretion should apply in order to reconsider the issues determined in the 1953 judgment. The claims by current association members that there was increased disrespectful and potentially criminal misconduct by persons using the beach do not warrant the defendant's unilateral restrictions on the use of the land dedicated for public use.[5] The misconduct of some users does not, however, warrant the defendant's restrictions on access to and use of Miami Beach. The defendant's installation of the fence, gated entrance, fees, and permits are restrictions on the public dedication of the beach that violate the 1953 judgment.

[5] There is no evidence with regard to the identity of the persons engaging in misconduct. There is no evidence whether such persons are members of the general public, residents of the town of Old Lyme, residents of Sound View, or even members or guests of residents of the association.

C. Prior Deeds of Conveyance

The defendant argues that, notwithstanding the 1953 judgment, the pertinent deeds of conveyance demonstrate that the public use of Miami Beach is limited to foot passengers and bicycles only. The defendant claims that the prior judgment did not consider the deeds of conveyance, which limit the public use of the beach to "foot passengers and bicyclists."[6] The court rejects the defendant's claim that the deeds of conveyance prior to 1951 provide authority to restrict access to the beach by a boundary fence, where the same issue involving the same defendant was litigated and decided in the prior judgment.

It is the defendant's position that the dedication to the public was limited to use as a public highway. The defendant claims that, given the limitation on the dedication, it has the right to impose any other restrictions on the use of Miami Beach that do not impede foot passengers and bicyclists. Simply stated, the defendant claims it can restrict the public's use of

---

[6] While Hilliard was alive, he laid out a plan for what is now known as the Miami Beach community. (Ex. 8, Ex. Z). The properties along the beachfront were all bound by the northerly boundary of Long Island Avenue. There is no claim or evidence that any beachfront property was conveyed to the high water mark of the Long Island Sound. Two earlier conveyances of property by Hilliard, to Henry A. Neivert and Edw. G. Sissarsky, by warranty deed recorded June 19, 1925, and to Geo. Angelo and Peter Gagliardi, by bond for deed recorded September 4, 1925, describe the southerly bounds of the conveyed property as bound southerly by Long Island Avenue, "another private road of said Hilliard." (Ex. W, Ex. Y). Hilliard also conveyed to Peter Gagliardi, by warranty deed dated recorded on April 23, 1930, real property similarly bound southerly by the northerly boundary of Long Island Avenue. (Ex. X). Each conveyance included the following: "The southerly boundary of Long Island Avenue, is the line of the mean Floodtide of the waters of Long Island Sound, and the said Hilliard hereby agrees for himself, his heirs and assigns [sic] that the land compromising the said avenue shall not be sold but be retained as an open way for public use as above described." Id. The preceding sentence provides, in pertinent part, that "[t]he said Gagliardi shall have the right of way through Pond Road, the road between Lots B1 and B2, through Lot B11 (which is now dedicated for road purposes) and for foot passengers and bicycles only, through Long Island Avenue." Hilliard's remaining property at the time of his death was conveyed by his estate by a certificate of devise dated December 7, 1942, and recorded with the town clerk of Old Lyme, and contains a similar description pertaining to Long Island Avenue. (Ex. T). Thereafter, Long Island Avenue is included in a quitclaim deed from Nunzio Corsino to the association recorded on November 29, 1951, with the town clerk. (Ex. V). For one dollar consideration, the releaser conveys all interest "in or to the private roads known as Long Island Avenue, for foot passengers and bicycles only, the road between Lots B1 and B2; through B11, Pond Road . . . as shown on the map of Miami Beach, Old Lyme, Connecticut, on file in the office of the Town Clerk of the Town of Old Lyme."

Miami Beach for purposes of recreation, leisure, sport, picnics, and the like. The court disagrees.

First, for all the reasons set forth in part III A and III B of this opinion, the court rejects this collateral attack on the 1953 judgment. The relevant deeds and conveyances are dated prior to the 1953 judgment. The Hilliard deed of conveyance of Long Island Avenue to the association occurred in 1951, and any claims as to the limitation of use could have or should have been raised in the 1953 action. Most significantly, the court expressly found that "[Hilliard] dedicated for public use the strip of land known as Long Island Avenue . . . and that this dedication for such use by the said Harry J. Hilliard was accepted by the unorganized public and has been continuously used and enjoyed by the public down to the date of the beginning of this action." *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902. Based on its findings, the court ordered the permanent removal of the boundary fence.

There is an additional reason to reject the defendant's claim. The necessary elements of dedication and acceptance are set out in *Meshberg* v. *Bridgeport City Trust Co.*, 180 Conn. 274, 279, 429 A.2d 865 (1980), as follows: "Dedication is an appropriation of land to some public use, made by the owner of the fee, and accepted for such use by and in behalf of the public. . . . Both the owner's intention to dedicate the way to public use and acceptance by the public must exist, but the intention to dedicate the way to public use may be implied from the acts and conduct of the owner, and public acceptance may be shown by proof of the actual use of the way by the public. . . . Thus, two elements are essential to a valid dedication: (1) a manifested intent by the owner to dedicate the land involved for the use of the public; and (2) an acceptance by the proper authorities or by the general public. . . . No particular formality is required in order to dedicate a parcel of land to a public use; dedication may be express or implied. . . . Whether there has been a dedication and whether there has been an acceptance present

questions of fact." (Citations omitted; internal quotation marks omitted.) In the prior judgment, the court made findings on Hilliard's dedication and the acceptance.

In the intervening years from 1953 to 2017, the general public had free and open access to Miami Beach consistent with the dedication found by the court in the prior judgment. The court rejects the defendant's claim that the defendant voluntarily allowed public access. The fence in 1953, and similarly in 2017, restricted the dedication of Miami Beach to the public. A fence is erected for the purpose of defining boundaries and to keep persons from crossing the boundary line. By its innate characteristic, it restricts access. The 1953 judgment concluded any controversy on the defendant's restriction of the public's access by installation of a fence on the boundary of Miami Beach, then Long Island Avenue, both then and now. *Vitello* v. *Corsino*, supra, Superior Court, Docket No. 20902.

In this case, the judgment was rendered based upon findings of fact by a court of competent jurisdiction. The parties do not need to be identical. *Wheeler* v. *Beachcroft*, supra, 320 Conn. 156-57. The defendant is the same in the 1953 judgment and the pending action. The plaintiffs in the 1953 action were residents of Sound View, as are the plaintiffs in this action, and respectively claim access to Miami Beach has been restricted by the defendant's installation of a fence on the boundary. There is no evidence that the parties, particularly the defendant, were not presented an opportunity to litigate fully the controversy in the prior action.

D. The "Clean Beach Program" was Reasonable

Finally, the defendant claims the "Clean Beach Program" is reasonable under the circumstances. Here again, the defendant's only evidence of any change in circumstance from the prior judgment is limited to the current misconduct by some users of Miami Beach. The defendant, whatever laudable intentions it may have, does not have the right to restrict access to Miami Beach to permit holders or paying users in order to remediate such conduct. Similarly,

fences, gates, and the imposition of permits or fees on users are unreasonable in light of the public's right to access to Miami Beach and the alternatives available to address the types of issues presented by the association residents. The defendant relies on user conduct to justify the association's "Clean Beach Program" to enforce restrictions on access to Miami Beach. Simply stated, from the date of Hilliard's dedication, Miami Beach has been dedicated for public use.

In its post-trial brief, the defendant argues that the implementation of the "Clean Beach Program" was a reasonable restriction on entry to Miami Beach and does not unduly limit the rights of any persons granted an easement to use the public right of way. For the reasons set forth in part III C of this opinion, the court rejects the defendant's position that the public dedication herein is limited to use as a public highway or is an easement granting a right of way. The cases to which the defendant cites in support of this argument, however, discuss this principle solely in the context of an easement granting a right of way rather than a dedication for public use, as in the present case. See *Kelly* v. *Ivler*, 187 Conn. 31, 48, 450 A.2d 817 (1982); *Orchard Place Associates, LLC* v. *Briggs*, Superior Court, judicial district of Stamford-Norwalk, Docket No. CV-01-0182302 (February 22, 2002, *Adams, J.*) (31 Conn. L. Rptr. 465); *Tighe* v. *Berlin*, Superior Court, judicial district of New Britain, Docket No. CV-97-0575028-S (August 9, 2000, *Rittenband, J.*). Furthermore, in *Kelly*, on which the defendant relies most heavily, the disputed fence infringing upon the easement extended only seven and one-quarter inches into the six foot wide right of way, which supported the court's decision that the fence was reasonable. *Kelly* v. *Ivler*, supra, 48. In contrast, the fence erected by the defendant in the present case blocks substantially all of the boundary of Miami Beach. Therefore, *Kelly* is inapplicable to the present case.

Finally, the defendant cites to *Kempner* v. *Greenwich*, 562 F. Supp. 2d 242 (D. Conn. 2008), to support its argument that, even if Miami Beach were dedicated as a public beach

rather than a right of way, the implementation of a permit or fee program is permitted under state and federal law. *Kempner*, however, addresses the imposition of a fee for beach access only in the context of that plaintiff's argument that the charge of a fee at a town-owned, public beach infringed on his first amendment rights and involves no discussion of easements. Id. The present case, in contrast, involves a beach dedicated for public use from private property rather than a town-owned beach; therefore, the first amendment considerations of *Kempner* do not apply.

IV. Conclusion

The court finds the issues in favor of the plaintiffs and grants their claims for relief as follows.

Wherefore, the defendant is ordered to remove the fence installed on the boundary of Long Island Avenue, commonly known as Miami Beach, now and hereinafter; the defendant is enjoined from maintaining or establishing any other fence on the boundary of Long Island Avenue, now and hereinafter and the defendant is further enjoined from charging fees and issuing permits for use of the Long Island Avenue by the public. The defendant shall comply with the prior judgment which bears repeating as follows; the defendant is further enjoined "from interfering with the rights of the plaintiffs and the unorganized public to free entry and egress and to free and unimpeded use and enjoyment of Long Island Avenue along its entire length and width, now and hereinafter."

The plaintiff shall be entitled to costs.

Knox, J.