APPELLATE COURT
OF THE
STATE OF CONNECTICUT

A.C. 43965

KATHLEEN TRACEY, ET AL.

v.

MIAMI BEACH ASSOCIATION

REPLY BRIEF OF DEFENDANT-APPELLANT

TO BE ARGUED BY:

DANIEL J. KRISCH

DANIEL J. KRISCH
KENNETH R. SLATER, JR.
HALLORAN & SAGE LLP
ONE GOODWIN SQUARE
225 ASYLUM STREET
HARTFORD, CT 06103
JURIS NO. 026105
TEL. (860) 522-6103
krisch@halloransage.com
slater@halloransage.com

ATTORNEYS FOR THE DEFENDANT

FILED: AUGUST 6, 2020

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases **Page(s)**

REPLY ARGUMENT

Three points in the plaintiffs' brief require a response:

First, the plaintiffs conflate two sources of the defendant's authority over its beach: its ownership of property and its charter. Plaintiffs' Brief ("PB") 2, 5-7. The defendant owns its beach down to the mean high tide mark of Long Island Sound. Harry Hilliard willed title to the beach to Edward Wilkins; Wilkins sold it to Nunzio Corzino; and Corzino conveyed it to the defendant. Defendant's Brief ("DB") 2-3; Defendant's Appendix ("DA") 98-103. The defendant's right to limit access to its beach flows from that ownership.[1] See *Schumann v. Dianon Sys., Inc.*, 304 Conn. 585, 635 (2012) (property owner may exclude public).

In addition, the legislature gave the defendant certain municipal powers over its "territory". DA 57-61. The defendant's charter describes the territory's southern boundary as "Long Island avenue," *id.* at 57, but the charter predates Corzino's conveyance to the defendant. DB 3; DA 98-103; see *New Haven Steamboat & Transp. Co. v. Vanderbilt*, 16 Conn. 420, 427 (1844) ("it is incident to all corporations, that they can hold property … [and] a principal object in the creation of most of them"). The conveyance of the beach dovetails with the charter, which empowers the defendant to "buy, sell, lease, mortgage, hold or own such land … as its purposes may require[.]" *Id.* at 58-59. Those "purposes" include caring for the beach, ensuring public health and safety, and controlling access to its property. *Id.* at 59-61. The provision also rebuts the notion that the charter "does not provide a claim for jurisdiction over the beach, and the trial court so found." PB 7. The court found nothing of the sort; DA 22-38; sensibly so, given that the charter authorizes the defendant to own the beach and grants the defendant many powers over it. *Id.* at 59-61.

Second, the plaintiffs argue that the "clerk's notes" in *Vitello v. Corsino* "do not rise to the level of a decision of the Court and clearly do not lead to the conclusion that this was a stipulated judgment." PB 3. The law belies the plaintiffs' argument.

[1] The plaintiffs alleged that Miami Beach is a "public beach". DA 12. The defendant denied this allegation, *id.* at 16, and the trial court implicitly rejected it, too. See *id.* at 29 ("Harry J. Hilliard, *the defendant's predecessor in title* to Miami Beach") (emphasis added).

The "circumstances surrounding the making of the judgment" matter when construing it. *Wheelabrator Bridgeport, L.P. v. City of Bridgeport*, 320 Conn. 332, 355 (2016); see *Brown v. Otake*, 164 Conn. App. 686, 709 (2016). In certain circumstances, the clerk's notes about a judgment are a critical interpretive tool. See *Connecticut Nat. Bank v. Gager*, 263 Conn. 321 (2003). In *Gager*, the named plaintiff moved to open a foreclosure judgment and withdraw the action as to three properties. *Id.* at 323. At the hearing on its motion, the plaintiff instead "sought to preserve the terms of the judgment[,]" *id.*, substitute Anne Sanger as plaintiff, and set new law days. *Id.* at 323 n. 4. The clerk recorded the trial court's order on the motion by drawing a "circle around the word "GRANTED" and a line through the word "DENIED" … [and] wr[iting] in the following: "The new law day is 10–11–94. All other terms of the judgment shall remain the same."" *Id.* at 323-24. The court later granted Sanger's motion to correct the judgment in order to clarify its "inten[t] to set new law days following the substitution of … the plaintiff rather than to approve the withdrawal of the foreclosure action." *Id.* at 324.

The Supreme Court affirmed. *Id.* at 322. Read literally, the circling of "GRANTED" would mean that the trial court granted the relief in the motion, i.e., withdrawal of the action. *Id.* at 327. The clerk's handwritten notation, "[t]he new law day is 10–11–94 … [a]ll other terms of the judgment shall remain the same[,]" made a literal construction "clearly inconsistent" with "the actual relief requested" at the hearing and the court's "actual order". *Id.* at 327-28; see *id.* at 328 n. 6 (relying on clerk's notation for "[a]nother plausible interpretation [that] harmonizes the order actually issued … and the order recorded").

As in *Gager*, the clerk's notes from the settlement conference in *Vitello* bear on the interpretation of that judgment. So, too, does the submission and the rejection of the first judgment file – absent a settlement and stipulated terms, the first judgment would have no reason to be (or be rejected). DB 5-6, 14-15, 19-20. Though the judgment contains boilerplate found in many judgment files; see DA 84 ("when the parties appeared and were at issue" "[t]he Court, having heard the parties"); nothing in it "clearly evidences that there

was a contested trial". PB 3. To the contrary, the judgment does not cite legal principles, discuss evidence, or rule on contested issues.

Third, *Vitello* did not concern "whether the "unorganized public" had the right to use Miami Beach *with restrictions*[.] *Id.* at 6 (emphasis added). The fence in *Vitello* blocked the entire east end of the beach and the *Vitello* plaintiffs alleged that it "prevente[d]" them from accessing the beach. DB 4; DA 64-65. The defendant could not have litigated the validity of limited restrictions on access to its beach in *Vitello* because its restriction was total.[2]

CONCLUSION

For those reasons and the reasons in the defendant's main brief, this Court should reverse the trial court and direct judgment for the defendant.

DEFENDANT,
MIAMI BEACH ASSOCIATION

By: 

Daniel J. Krisch
Kenneth R. Slater, Jr.
Halloran & Sage LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06103
Juris No. 026105
Tel. (860) 522-6103
krisch@halloransage.com
slater@halloransage.com

Its Attorneys

[2] The plaintiffs claim "that an earlier attempt to reinstall the fence in the years prior to 2017 resulted int [sic] the Town of Old Lyme removing the fence unilaterally[.]" PB 4. Tellingly, the plaintiffs do not cite the record for this claim – likely because there was no evidence of it and the trial court made no finding about it.

CERTIFICATION PURSUANT TO PRACTICE BOOK §§ 62-7 & 67-2

I hereby certify, pursuant to Practice Book § 67-2, that (1) the electronically submitted reply brief has been delivered on August 6, 2020, to the last known e-mail address of each counsel of record for whom an e-mail address has been provided; and (2) on August 6, 2020, copies of the reply brief have been sent to each counsel of record and to any trial judge who rendered a decision that is the subject matter of the appeal, in compliance with Section 62-7:

The Honorable Kimberly A. Knox
SUPERIOR COURT
70 Huntington Street
New London, CT 06320

William E. McCoy, Esq.
Heller, Heller & McCoy
736 Norwich-New London Turnpike
Uncasville, CT 06382
Tel. (860) 848-1248
hhm-bill@sbcglobal.net

I further certify, pursuant to § 67-2, that: (1) the electronically submitted reply brief and the filed paper reply brief have been redacted or do not contain any names or other personal identifying information prohibited from disclosure by rule, statute, court order or case law; (2) the reply brief being filed with the appellate clerk is a true copy of the reply brief that was submitted electronically; and (3) the reply brief complies with all provisions of this rule and the font used is Arial 12.

Daniel J. Krisch