

APPELLATE COURT
OF THE
STATE OF CONNECTICUT

A.C. 43965

KATHLEEN TRACEY, ET AL.

Plaintiffs-Appellees

V.

MIAMI BEACH ASSOCIATION

Defendants-Appellants

BRIEF OF PLAINTIFFS-APPELLEES

William E. McCoy
Heller, Heller & McCoy
736 Norwich-New London Turnpike
Uncasville, Connecticut 06382
TEL: (860) 848-1248
FAX: (860) 848-4003
E-Mail: hjm-bill@sbcglobal.net
Juris No. 027155

COUNSEL FOR PLAINTIFFS APPELLEES

TO BE ARGUED BY:
WILLIAM E. MCCOY

FILED: JULY 28, 2020

TABLE OF CONTENTS

	PAGE
Statement of Issues.....	ii
Table of Authorities.....	iii
Statement of Facts and Proceedings.....	1
I. Introduction.....	1
II. Factual and Procedural History.....	2
Argument.....	5
Conclusion.....	8

STATEMENT OF ISSUES

I. Was the Trial Court's Judgment enjoining the Defendant from interfering with Plaintiff and the Public's use of the so-called Miami Beach at Old Lyme, Connecticut supported by the evidence admitted at trial?

II. Did the Trial Court properly apply the doctrines of Res Judicata and Collateral Estoppel in reaffirming the decision of Vitello v. Corsino (Superior Court Docket Number 20902) in its Judgment against the Defendant in the instant case?

TABLE OF AUTHORITIES

CASES

PAGE(S)

Vitello, et al v. Corsino, et al 1, 2, 3, 4, 5, 6, 7, 8

Souza v. Souza 2

Cohen v Cohen 2

Tracey, et al v. Miami Beach Association, Inc. 6, 7

STATEMENT OF FACTS AND PROCEEDINGS

I. INTRODUCTION

This appeal follows the findings and Judgment of the Trial Court that the Defendant/Appellant is bound by a 1953 Judgment of the Superior Court that the Miami Beach Association (a Defendant in the 1953 case) was bound by that 1953 Judgment and enjoined from interfering with the free access of the Public and the named Plaintiffs in their use and enjoyment of an area called Miami Beach in the Town of Old Lyme, Connecticut.

There are two claims made in the Appellant's Brief which must be addressed in this Introduction. Firstly, the assertion that the 1953 decision in the case of Vitello, et al v. Corsino, et al (JD of New London February 18, 1953) was by Stipulation of the parties is inaccurate. The Decision in the Vitello, et al v Corsino, et al case was by Memorandum of Decision after a fully contested trial. The second inaccurate assertion made by the Appellants is that the so-called Miami Beach is part of the area created as a Specially Chartered Municipal Corporation, which corporation resulted from an Act of the State Legislature. In fact, the beach area of Miami Beach (commonly referred to as Long Island Avenue) was specifically excluded from the territory over which the Miami Beach Association had jurisdiction as a quasi-municipal body.

The so-called Miami Beach identified as Long Island Avenue. The public act creating Miami Beach Association identifies the southerly boundary of the Corporation as Long Island Avenue, thereby excluding Miami Beach from the jurisdiction of the Corporation. (DA57-DA61 of the Appellant's Appendix). This error is significant because it impacts the Defendant/Appellants argument that the Defendant Appellant has rights to exercise legislatively created police powers over Miami Beach.

For purposes of this Introduction the Appellees, Kathleen Tracy (Kathleen Tracy is identified as being Tracey in the heading of this Case however, the correct spelling of her name is Tracy) and her Co-Plaintiffs simply assert that the Trial Court in a well-reasoned decision determined and found that the Defendant/Appellant is bound by the Superior Court Judgment against them and that it has violated the rights of the public to free unobstructed use of Miami Beach.

This Appeal concerns the decision of the Trial Court that a 77-year-old Judgment, not a stipulated Judgment but Judgment following trial, should be enforced. Final Judgments are presumptively valid, collateral attacks on their validity are disfavored. Souza v. Souza 322 Conn 757, 771, 143 A3rd 578 (2016). See also Cohen v Cohen 327 Conn. 485, 502, 178 A3rd, 92 (2018). In other words, a Final Decision of the Superior Court is entitled to the authority that a permanent decision is given. The parties should not be able to relitigate matters which have long been resolved because it provides consistency to Judgment in the Judicial System. In a well-reasoned decision by the Trial Court the Court summarizes the evidence provided, and indeed based on the fact that much of the factual issues in this case are not contested. In summarizing the factual testimony and factual findings the Trial Court makes clear that very little of the dispute in this case is as a result of contested facts. (DA24, Page 3 of the Memorandum of Decision.)

The Trial Court in its Memorandum of Decision correctly finds that the doctrines of Res Judicata and Collateral Estoppel preclude the Defendant Appellants Collateral attack on the decision of Vitello v. Corsino and in its Judgment the Trial Court reaffirms the order in the Vitello v. Corsino that the Defendant Appellant, Miami Beach Association, is enjoined from interfering with the publics use of Miami Beach in Old Lyme, Connecticut.

II. FACTUAL AND PROCEDURAL HISTORY

The Defendant is in fact a Specially Chartered Municipal Corporation within the Town of Old Lyme, however that Charter is limited to the area defined by its original Charter. The area defined by the original Charter includes a parcel of land subdivided by building lots with that territory ending Northerly of what is now the beach portion of Miami Beach. Essentially, the Specially Chartered Municipal Corporation has jurisdiction over certain roadways that run through the subdivision and over the maintenance and control of the community which consists of approximately 260 homes.

The Plaintiffs are property owners in the Sound View section of Old Lyme. The Sound View section of Old Lyme abuts the Miami Beach Association to the east and the Sound View section of Old Lyme and the Miami Beach Community were originally owned by a

gentleman by the name of Hillard. Mr. Hillard developed these properties as subdivisions but he specifically dedicated the Beach to the south of Miami Beach now known as Miami Beach for public use.

In a decision known as Vitello v. Corsino (Docket Number 20902) which was heard in the Superior Court Judicial District of New London, the Court found that Hillard's dedication of Miami Beach to public use was established and the Court further found that it had been dedicated to that public use over a substantial period of time. The Court in Vitello v. Corsino found that the public had had continuous use and enjoyment of the beach from the time of dedication until the decision in 1953.

The Plaintiff's in the Vitello v Corsino case were Soundview residents who brought suit against the Miami Beach Association and other officers and members of the Miami Beach Association to prevent the Miami Beach Association from infringing upon the public's access to Miami Beach. The Miami Beach Association had in 1952 erected a fence which impeded the access to the beach by persons not part of the Miami Beach Association. The Judgment in Vitello v Corsino and Memorandum of Decision can be found at DA83-DA86. At page 5 of the Defendant Appellants Brief it asserts that the parties in the Vitello v. Corsino matter settled their claims instead of actually litigating them. In fact, that is not correct. Although the Defendant Appellant places great emphasis on clerk's notes which are found at DA76-DA78 of the Defendant's Appendix those notes 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. The Trial Court decision in Vitello v. Corsino authored by Thomas E. Trolland, Judge, clearly evidences that there was a contested trial with findings of fact and orders of the Court which followed that trial.

The Plaintiff Appellee's in the instant case are similarly situated to the Plaintiff's in the Vitello v. Corsino file. The Defendant Appellant in the instant is also a Defendant in the Vitello v. Corsino file.

In the year 2017 the Defendant Appellant reinstalled a fence along the easterly boundary of Miami Beach and implemented a program to charge persons not holding property in the Miami Beach Association to pay fees and receive permits to enter onto Miami Beach. The Defendant Appellant named its program the Clean Beach Program but that

program was a pretext for inhibiting the general public from entering onto Miami Beach and the fence served as a boundary to also discourage public use of the beach. Significantly the fees charged for Sound View Residents was less than the general public in part to discourage this litigation which followed those new rules and obstacles to public use. It should be noted that an earlier attempt to reinstall the fence in the years prior to 2017 resulted in the Town of Old Lyme removing the fence unilaterally and no litigation resulted from that attempt to preclude the public from beach use.

The Trial Court in the instant case found that while the so-called Clean Beach Program may have had benefits in keeping in promoting a clean beach it nonetheless violates the prohibitions of the Court in the Vitello v. Corsino Decision. There is no substantial difference between the action of the Miami Beach Association in 2017 versus the actions of the Miami Beach Association in 1953 which resulted in the Decision of Vitello v. Corsino. In its well written decision, the Trial Court in the instant case found that there was a privity between the parties in the instant case and that of the Vitello v. Corsino case and, therefore, the Defendant in the instant case was prohibited from interfering with the general public's free access to the beach.

ARGUMENT

I. Was the Trial Court's Judgment enjoining the Defendant from interfering with the Plaintiff and the Public's use of the so-called Miami Beach at Old Lyme, Connecticut supported by the evidence admitted at trial?

There does not appear to be any issue raised in the Defendant Appellant's Brief concerning the specific findings of the Court relative to the evidence presented at Trial, in that the facts presented by the parties were generally not in dispute. There is no question that the Miami Beach Association was a Defendant in the Vitello v. Corsino case nor is there any question that the Miami Beach Association erected a fence along the boundary line with Sound View and instituted a program for beach passes and fees for non-Miami Beach Association members using the so-called Miami Beach.

The one, perhaps, significant feature of dispute is the authority of the Miami Beach Association over the so-called Miami Beach pursuant to its Charter. As has been previously discussed the area of the Miami Beach Association under its Charter does not include the beach itself and at Page 15, DA36 and Page 16 DA37 of the Trial Court's Memorandum of Decision in the instant case make it clear that the Court determined that however laudatory the Defendant Appellant's programs are to keep the beach clean they are not within the rights of the Miami Beach Association to interfere with the free access of the public to Miami Beach. In fact, the Plaintiff Appellees would argue that the Clean Beach Program was pretextual and an attempt to create a distraction for purposes of avoiding the binding effect of the Vitello decision the trial properly found that restrictions placed by the Defendant Appellant's on the public were improper. That finding is fully supported by the documentary evidence and testimony.

Moreover, the Court properly found, based upon the documentary evidence and testimony, that the public use enjoyed by the public to Miami Beach is not restricted to simply walk along the beach, but extends to the full use and enjoyment of the beach, Page 13 of Decision at DA34. Significantly in the Trial Court decision, Judge Knox restates the broad language of the Vitello decision on Page 17 of her Memorandum of Decision. DA38.

II. Did the Trial Court properly apply the doctrines of Res Judicata and Collateral Estoppel in reaffirming the decision in Vitello v. Corsino (Superior Court Docket Number 20902) in its Judgment against the Defendant in the instant case?

The Defendant Appellant argues that the Plaintiff Appellees in this case lack privity with the Plaintiffs in the in the case of Vitello v. Corsino for purposes of the application of Res Judicata. This is a perplexing argument because the named Plaintiffs in this case are residents of the Sound View section of Old Lyme, Connecticut and therefore in exactly the same position as the Plaintiffs in the Vitello case.

The cases cited by the Defendant/Appellant for a lack of privity in value clearly distinguishable situations ie., general contractors v. subcontractors or land owners with different positions in their rights to the use of real estate.

In this case there are no factual distinctions between the parties in the Vitello case the parties in Tracey, et al v. Miami Beach Association, Inc. The Defendant in the instant case is identical to the Defendant in the Vitello case. Therefore, the Trial Courts finding that privity is established is well supported by the facts.

The Defendant Appellants second claim for the application of Res Judicata is that the issues in the Vitello case and the present case are not the same. In point of fact the issue litigated in the Vitello case was whether the “unorganized public” had the right to use Miami Beach with restrictions and the same issue and claim was raised in the present case. The Defendant Appellants alludes to the fact that the passage of time alone can cause the claim to be dissimilar. But in this case the history at this controversy has been that periodically the Defendant Appellant has attempted to restrict the public access to the beach each time involves a time as part of the effort. The fact that in the present case that the Defendant claims to have allowed public access with conditions does not solve the problem. In its decision the Trial Court properly determined that the change in interference and control by the Defendant did not change the application of the Vitello case prohibitions to the present Clean Beach Program.

The claims which were adjudicated in the Vitello case and the claims in the instant case are the same, and any argument that there is new justification for the Defendant

Appellant's actions is without merit. Any additional claims made in the present case could and should have been made in 1952/1953.

As the Defendant Appellant acknowledges the doctrines of Res Judicata and Collateral Estoppel are close cousins. The argument of the Defendant Appellant is that the validity of the Clean Beach Program is a new claim not raised or determined in the Vitello decision. The argument made by the Defendant Appellant is that the issues in Vitello and the present case, again, therefore Collateral Estoppel does not apply. The mere fact that the Defendant Appellant found a new way to restrict public access does not make the claims different. The clear language of the Vitello decision, which was not appealed, is that the Defendant may not interfere with the free and unencumbered access to the public. The facts that were considered and determined in the Vitello case are identical to the present case in that the Vitello Court was presented with same facts as the Tracey, et al v. Miami Beach Association, Inc. Court that the Defendants in both cases sought to exercise control over the use of the beach.

What the Defendant Appellant's Brief ignores is that fundamentally at the trial currently subject of this appeal, the Defendant's primary argument at Trial was that the public use was restricted to pedestrian traffic and that there was no right of the public to have recreational use. That argument was resolved by the clear language in the Vitello Memorandum of Decision. The additional argument made at the trial in the present case was that the public's behavior recently has declined requiring action by the Defendants. This decline of conduct argument fails to recognize that the Defendant/Appellants rights to limit public access to the beach is not created for that condition. Bear in mind that the Character of the Defendant Appellant does not provide a claim for jurisdiction over the beach, and the trial Court so found. The Public Act creating Miami Beach Association, Inc., has not been modified since its adoption.

CONCLUSION

In a real reasoned decision, the trial Court determined that the decision in Vitello v. Corsino found that the Defendant/Appellant may not interfere or obstruct the public use of Miami Beach. The Court found that based upon the related doctrines of Res Judicata and Collateral Estoppel that the Defendant/Appellant is bound by the decision and that the claims by the Defendant/Appellant that the Vitello decision did not apply to the present case were unpersuasive. The cases cited by the Trial Court show a conscientious effort on the Trial Court to research and support its decision by Common Law precedent.

THE PLAINTIFFS-APPELLEES
KATHLEEN TRACY; JERRY VOWLES;
DEE VOWLES; and ROBERT BREEN



William E. McCoy
Heller, Heller & McCoy
736 Norwich-New London Turnpike
Uncasville, Connecticut 06382
Telephone: (860) 848-1248
Fax: (860) 848-4003
E-Mail: hjm-bill@sbcglobal.net
Juris No: 027155
Their Attorney

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

I hereby certify, pursuant to Practice Book § 67-2, that (1) electronically submitted brief have been delivered on July 28, 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 July 28, 2020, copies of the 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:

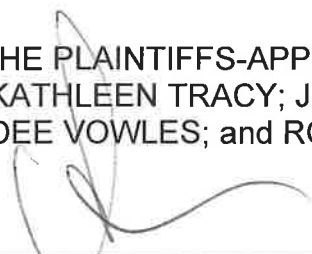
The Honorable Kimberly A. Knox
SUPERIOR COURT
70 Huntington Street
New London, CT 06320

Daniel J. Krisch
Halloran & Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06106
TEL: 860-522-6103
krisch@halloransage.com

Kenneth R. Slater, Jr.
Halloran & Sage, LLP
One Goodwin Square
225 Asylum Street
Hartford, CT 06106
TEL: 860-522-6103
slater@halloransage.com

I further certify, pursuant to § 67-2, that: (1) the electronically submitted brief and the filed paper 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 brief being filed with the appellate clerk are true copies of the brief that were submitted electronically; and (3) the brief complies with all provisions of this rule and the font used is Arial 12.

THE PLAINTIFFS-APPELLEES
KATHLEEN TRACY; JERRY VOWLES;
DEE VOWLES; and ROBERT BREEN



William E. McCoy
Heller, Heller & McCoy
736 Norwich-New London Turnpike
Uncasville, Connecticut 06382
Telephone: (860) 848-1248
Fax: (860) 848-4003
E-Mail: hjm-bill@sbcglobal.net
Juris No: 027155
Their Attorney