

NO. UWY (X02) CV-05-4009028 S : SUPERIOR COURT

BARBARA SCULLY et al. : JUDICIAL DISTRICT  
: OF WATERBURY

VS. : AT WATERBURY

TOWN OF WEST HARTFORD, :  
et al. : APRIL 17, 2007

APR 19 2007

MEMORANDUM OF DECISION

RE: MOTIONS TO DISMISS

I. BACKGROUND

The instant action is the last vestige of nearly two years of litigation initiated by the plaintiffs, relating to the development and construction of Blue Back Square, a mixed use residential and commercial real estate development project in West Hartford Center.

On April 12, 2005, the plaintiffs filed an eight-count complaint against the Town and several municipal employees and various other private defendants. The complaint alleged,

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*inter alia*, that the Town had exceeded its municipal economic development authority and violated various Town Resolutions. It also alleged that the Town had acted in an arbitrary manner in approving an ordinance authorizing the issuance of the general obligation bonds and the resolution authorizing the execution of a master agreement. In their prayer for relief, the plaintiffs sought both declaratory and injunctive relief, as well as any other relief the court deemed necessary.

On September 13, 2005, the court (Booth, J.) granted summary judgment as to seven of the eight counts, leaving only count 6, for further proceedings. See Scully v. Town of West Hartford, Superior Court, complex litigation docket at Waterbury, Docket No. X02 CV05 4009028 S (September 13, 2005, Booth, J.). Count 6 alleged that the Town defendants' actions in approving the Blue Back Square development project were arbitrary and capricious.

On December 4, 2006, the plaintiffs, who had never moved for an injunctive proceeding in state court, filed a motion to dismiss the matter. The basis of the motion is that the above-captioned matter is now moot due to "the expenditure of municipal funds, the demolition of the Education Building and the completion or ongoing construction of infrastructure and related components of "Blue Back Square" . . . ."

The private defendants and the Town of West Hartford have objected to the motion on procedural grounds. The private defendants have also filed a motion to dismiss on the grounds of mootness. All parties appeared and argued the motions before the court on April 9, 2007. Both the plaintiffs and the private defendants agreed that the case was moot. The Town of West Hartford did not take a position on the issue of mootness in its brief. However, during oral argument the Town's attorney

indicated that she agreed with the position taken by the attorney for the private defendants. After hearing the arguments of counsel, the court deferred decision on the motions.

## II. LAW

Practice Book Section 10-30 states in relevant part: “ Any defendant wishing to contest the court’s jurisdiction . . . must do so by filing a motion to dismiss within thirty days of the filing of an appearance.” There is no Connecticut State court authority which allows a plaintiff to file a motion to dismiss his or her own action. The plaintiffs have cited three cases to the court which are all Federal decisions.

It is true that plaintiffs are permitted to file motions to dismiss their own actions in federal courts, but only because the federal rules of procedure limit the circumstances in which plaintiffs can withdraw without court permission. Pursuant to Fed. R. Civ. P. 41(a)(1), plaintiffs may withdraw their action without a court order in only two situations: (1) when all parties in the action stipulate to the withdrawal; or (2) before the adverse party serves either an answer or a motion for summary judgment. In the absence of those two circumstances, plaintiffs must file a motion for voluntary dismissal under Rule 41(a)(2), and the court has the discretion to deny or grant the motion “ upon such terms and conditions as the court deems proper.”

Plaintiffs in Connecticut state courts, in contrast, do not need to file motions to dismiss because they have much broader powers to withdraw without court permission. Pursuant to Connecticut General Statutes Section 52-80, “ a plaintiff may

withdraw any action [as of right] before the commencement of a hearing on the merits thereof . . . and does not need the permission of the court for cause shown if a hearing on an issue of fact has not commenced.” Matey v. Waterbury, 24 Conn. App. 93, 96-97, 585 A.2d 1260 (1991). If no hearing on an issue of fact has commenced, the plaintiff’s right to withdraw is “absolute and unconditional”. Id. at 97. The plaintiffs argue that a hearing on the merits had already begun because the court granted summary judgment and made several findings of fact in its decision. Assuming, *arguendo*, that the plaintiffs are correct in this assertion, the appropriate remedy would have been a motion for permission to withdraw the lawsuit. Instead, for reasons which can only be surmised, they chose to file a motion to dismiss their own case.

Connecticut law regarding mootness is well settled. “Mootness implicates [a] court’s subject matter jurisdiction and is thus a threshold matter for [a court] to resolve.” Sweeney v. Sweeney, 271 Conn. 193, 201, 856 A. 2d 997 (2004). “Mootness presents a circumstance wherein the issue before the court has been resolved or has lost its significance because of a change in the condition of affairs between the parties. . . . Since mootness implicates subject matter jurisdiction . . . it can be raised at any stage of the proceedings.” Twichell v. Guite, 53 Conn. App. 42, 51-52, 728 A. 2d 1121 (1999). The courts have consistently held that they do not render advisory opinions and must dismiss a case “if there is no longer an actual controversy in which [the court] can afford practical relief to the parties.” Id. at 52.

In the instant case, the actions which the plaintiffs sought to be declared illegal and enjoined have already occurred. Specifically, the challenge to the validity of the Town’s approval

of the issuance of \$48.8 million in municipal bonds to fund two parking garages is moot because the bonds were issued on or about October 18, 2005, and the two garages that were to be funded from the proceeds are nearly complete. In addition, the challenge to the validity of the Master Agreement and the transfer of Town property to the developer are also moot because the Master Agreement was executed and the property was transferred pursuant to it on September 8, 2005. The property cannot be returned to the Town because its value to the Town has been irreparably destroyed because the Board of Education building that was on the property has been demolished. Furthermore, the developer is now in the process of constructing a private retail building in its place. Consequently, it is agreed that there is no practical relief available to the plaintiffs. Further, there is no reasonable likelihood that the plaintiffs will confront a similar situation in the future.

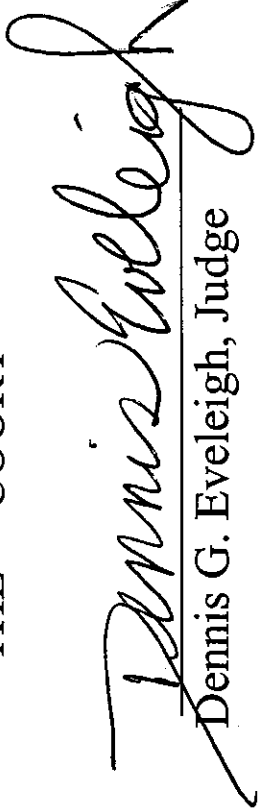
These circumstances make the declaratory judgment and injunctive relief the plaintiffs sought now moot. Accordingly, this matter should be dismissed because the court no longer has subject matter jurisdiction and cannot fulfill its purpose, as authorized by General Statutes Section 52-29 and Practice Book Section 17-55, “to secure an adjudication of rights where there is a substantial question in dispute or a substantial uncertainty of legal relations between the parties.” Wilson v. Kelley, 224 Conn. 110, 115, 617 A. 2d 433 (1992).

### III. CONCLUSION

Based upon the foregoing, the plaintiffs’ motion to dismiss

is denied. The private defendants' motion to dismiss is granted. The matter is dismissed as to all parties on the ground of mootness, and, hence, the court's lack of subject matter jurisdiction.

THE COURT

  
Dennis G. Eveleigh, Judge