

EXCERPT

(Starts typing Lynda Scott)

THE COURT: Be seated. Okay. Mr. Williams.

BY ATTY. WILLIAMS:

Q Attorney Goldberg, focusing on the opinion that you have given here today. I'm just asking about the basis for that opinion. There is no Connecticut statute that provides that an LDA becomes invalid if the underlying redevelopment plan expires, correct?

ATTY. RUBIN: Objection. Objection.

THE COURT: Sustained.

Q Is it a fact that a municipality can enter into an LDA without having an underlying redevelopment plan?

A It's not an LDA then. Or it's not what in redevelopment circles would be an LDA, it's just a contract for development of presumably a city parcel.

ATTY. WILLIAMS: Nothing further.

THE COURT: Okay. Mr. Rubin. Some redirect.

RE-DIRECT EXAMINATION BY ATTY. RUBIN:

Q Attorney Goldberg, you were asked on direct examination about whether an LDA by its terms can contract or provide a termination date. Do you recall that testimony?

A Yes.

Q What would the -- can reconcile -- do you have an opinion about what would happen under circumstances where an LDA had an expiration date but the redevelopment plan

1 expired?

2 ATTY. WILLIAMS: Objection. He's now being
3 asked to interpret provisions of a contract that's
4 not in evidence and that requires a legal opinion and
5 goes beyond opinion permitted in the case.

6 ATTY. CALLAHAN: (Indiscernible).

7 ATTY. WILLIAMS: Right.

8 ATTY. RUBIN: Judge, they opened the door to
9 this. They can't ask Attorney Goldberg whether an
10 LDA -- an LDA has a termination date, don't parties
11 have a right to pick their own termination date and
12 doesn't that govern and then not permit closing a
13 loop on that relative to the interrelationship
14 between that and the issues of her opinion.

15 ATTY. WILLIAMS: I asked can the parties do
16 that, do they have a right. It's all factual. It
17 doesn't mean you're allowed to give a legal opinion
18 then as to what the impact would be of X and such.

19 THE COURT: Well, my problem is just what would
20 be the foundation for the answer. Your question, Mr.
21 Rubin, is let's say you have an LDA with a
22 termination and you have a plan that expires.

23 ATTY. RUBIN: Prior to that tetermination.

24 THE COURT: And the question is what is the
25 impact on the LDA?

26 ATTY. RUBIN: What would the impact on that LDA
27 be?

1 ATTY. WILLIAMS: And that's --

2 THE COURT: Well, I don't know that --

3 ATTY. RUBIN: What would the impact on the
4 termination date be?

5 THE COURT: I don't know if -- I guess the first
6 question is have you seen that, have you dealt with
7 that?

8 THE WITNESS: Not that specific -- not
9 personally, no.

10 THE COURT: Okay. Then we're not going to go
11 there.

12 BY ATTY. RUBIN:

13 Q When you were dealing with the downtown plan, the hole
14 in the ground plan, and you were dealing with the issues of
15 the potential expiration of that plan, were there other
16 termination dates and operative agreements that went past
17 the expiration of the redevelopment plan?

18 ATTY. WILLIAMS: Objection. He's asking for
19 facts not in evidence, specific contract. It's
20 hearsay and it goes into the areas that the Court has
21 precluded. And it's irrelevant because Attorney
22 Goldberg has testified that she doesn't have
23 experience with the application of the expiration of
24 a plan on an LDA. So what that LDA said is entirely
25 irrelevant and not helpful.

26 THE COURT: Right. And your question is are
27 there other agreements? Well, there could be lawn

1 service agreements.

2 ATTY. RUBIN: Would I could limit it to the LDA.
3 I'm under the impression that the Court denied the
4 previous question because there was a lack of
5 foundation.

6 THE COURT: Right.

7 ATTY. RUBIN: I'm now trying to establish
8 whether there is a foundation; I don't know whether
9 there is a foundation but I'm inquiring as to -- I'm
10 not sure whether or not that foundation can be
11 established but the door was opened relative to
12 questions about parties contracting for a termination
13 date that was past a potential expiration of a plan.

14 And -- so I think once that's opened, I'm
15 entitled to inquire as to that.

16 THE COURT: Not if there's no basis for it. And
17 I don't think there is one here.

18 ATTY. RUBIN: Okay.

19 THE COURT: I'm going to sustain the objection.

20 (Pause)

21 **BY ATTY. RUBIN:**

22 Q Attorney Goldberg, you've been asked questions
23 about -- on redirect, I'm sorry, on cross about the
24 expiration of redevelopment plans in general, correct?

25 A Yes.

26 Q Can -- do you have -- can you amend a plan after it
27 has expired?

1 A No.

2 ATTY. WILLIAMS: Objection. It's outside the
3 scope the scope of cross.

4 THE COURT: Sustained.

5 ATTY. WILLIAMS: Thank you.

6 THE COURT: Strike the answer.

7 ATTY. RUBIN: No further questions.

8 THE COURT: Okay. Mr. Williams.

9 ATTY. WILLIAMS: No, thank you.

10 THE COURT: All right. You may step down.

11 Thank you for coming.

12 ATTY. GOLDBERGER: Thank you, Your Honor.

13 (Witness steps down)

14 THE COURT: All right.

15 ATTY. RUBIN: Well, Attorney -- I always call
16 him attorney, I don't know why. Maybe it's because
17 I've seen him on the stand so many times -- so many
18 days. Mr. Sheehan was here.

19 THE COURT: Yeah.

20 ATTY. RUBIN: I had informed Attorney Callahan
21 and Attorney Williams that I was not going to call
22 him --

23 THE COURT: Yeah.

24 ATTY. RUBIN: -- and my intention is not to call
25 him.

26 THE COURT: Okay.

27 ATTY. RUBIN: The representation also was made,

1 though, although the reservation was made --

2 THE COURT: There was a reservation.

3 ATTY. RUBIN: -- that Attorney Williams might
4 use Mr. Sheehan as a rebuttal witness.

5 THE COURT: Right. Because I said something
6 might be more proper in that context.

7 ATTY. RUBIN: Right. So to the extent that Mr.
8 Sheehan is being called as a rebuttal witness because
9 he is here then I'm going to avail myself to call him
10 first. To the extent that he's not here, then I have
11 no further -- I don't want to rest and then have
12 Attorney Sheehan (as spoken) reappear as a rebuttal
13 witness and then be limited to the rebuttal.

14 I can ask him questions but I told him I wasn't
15 going to so I will honor that. But if they are going
16 to call him as a rebuttal then I'm going to call him
17 first. And I don't see him here so I assume he's not
18 being called as rebuttal.

19 ATTY. WILLIAMS: Is that the question for me?

20 ATTY. RUBIN: Yes.

21 ATTY. WILLIAMS: I am not calling anybody in
22 rebuttal.

23 ATTY. RUBIN: Okay. Then I have no further
24 witnesses.

25 THE COURT: So you're resting?

26 ATTY. RUBIN: I rest.

27 THE COURT: On this matter?

1 ATTY. RUBIN: I rest on this matter.

2 THE COURT: Okay. Do the plaintiffs have any
3 rebuttal?

4 ATTY. WILLIAMS: No, Your Honor.

5 THE COURT: All right. Then that will close
6 evidence with respect to the motion to dismiss.
7 Right?

8 ATTY. RUBIN: I have an issue that I'd like to
9 raise relative to the motion to dismiss.

10 THE COURT: Sure.

11 ATTY. RUBIN: The Court has suggested on
12 numerous occasions -- well, let me withdraw that.

13 There is a possibility, a possibility exists
14 that the Court has suggested that the case might not
15 be dismissed as to economic damages but might be
16 dismissed or might be rendered -- I won't say
17 dismissed -- but as to injunctive claims, those would
18 otherwise disappear.

19 Courts routinely take motions to dismiss for
20 subject matter jurisdiction and interpret as motions
21 for summary judgment, interpret them as other motions
22 other than motions to dismiss.

23 I am comfortable filing a motion for summary
24 judgment on the same grounds as the motion to
25 dismiss, I'm comfortable with the Court saying don't
26 worry, I got it to the extent that I believe that
27 this should be converted for a limited purpose to a

1 summary judgment motion, I will do that. But what I
2 don't want to find myself in is a situation where the
3 Court makes a determination that the case, for some
4 reason, should continue as to economic damages and we
5 are in the middle of an injunction hearing that
6 should not be taking place because there's no
7 injunctive relief that can be obtained.

8 So I raise that as an issue and I ask the Court
9 for its -- I ask Attorney Williams for his thoughts
10 and I ask the Court for its thoughts.

11 THE COURT: Okay. I --

12 ATTY. WILLIAMS: May I have a moment, Your
13 Honor?

14 THE COURT: Yes.

15 ATTY. WILLIAMS: Thank you.

16 THE COURT: I appreciate your question and you
17 interpret what I am thinking so that's useful that
18 you made that statement. So let's see what the
19 plaintiffs have to say.

20 (Pause)

21 ATTY. WILLIAMS: Well, that's the first time the
22 concept was raised so I would -- I would like to have
23 the opportunity to potentially expound upon what I
24 will say off the cuff right now, Your Honor --

25 THE COURT: Okay.

26 ATTY. WILLIAMS: -- which is -- my understanding
27 of it and I'm not saying that I know that I'm right

1 but I believe it's correct. That the Courts have
2 said where there's a motion to strike challenging the
3 pleadings and then it goes beyond the pleadings, that
4 can be converted into a motion for summary judgment.
5 I at least question if that can be done for a motion
6 to dismiss on purported grounds of lack of subject
7 matter jurisdiction.

8 We believe the defendants knew all along that
9 this motion doesn't legitimately challenge the
10 subject matter jurisdiction of the Court and yet it
11 has been used again to delay the proceeding.

12 So I don't consent to it being -- I mean, if
13 that's the way the Court decides to view it, so be it
14 but we don't consent to it being converted into
15 anything.

16 The next point I would make is there already is
17 a motion for summary judgment pending and I think
18 it's beyond the bounds of what's appropriate and I
19 don't think the Court should permit another motion
20 for summary judgment while there is one on file.

21 THE COURT: Well, there's the motion to strike
22 pending.

23 ATTY. WILLIAMS: There's a motion for summary
24 judgment also.

25 THE COURT: Is there a summary judgment as well?

26 ATTY. WILLIAMS: By the Milligan defendants.

27 That we've already objected --

1 ATTY. CALLAHAN: Same time.

2 ATTY. RUBIN: No they have not objected to it.

3 ATTY. CALLAHAN: We did.

4 ATTY. RUBIN: They requested from me the
5 courtesy of not having to file an objection to the
6 motion for summary judgment until after the motion to
7 dismiss was resolved. And I granted them that
8 courtesy.

9 THE COURT: Uh-huh.

10 ATTY. CALLAHAN: And we --

11 ATTY. WILLIAMS: Yeah.

12 ATTY. RUBIN: The Court is -- there is case law
13 that addresses motions to dismiss for -- I can give
14 the Court the cites. I mean -- where there's motions
15 to dismiss for lack of subject matter jurisdiction
16 that gets converted. I can always set it up in a
17 number of ways. They haven't objected to the summary
18 judgment motion, I could -- to the extent that the
19 Court feels that it's inappropriate to have two
20 motions for summary judgment, it's not joined because
21 they haven't even filed an objection, I could simply
22 withdraw it and file a new motion for summary
23 judgment --

24 THE COURT: Right.

25 ATTY. RUBIN: -- and then refile it at a
26 different time.

27 ATTY. WILLIAMS: Well, it is --

1 ATTY. RUBIN: Please, please.

2 ATTY. WILLIAMS: I was interrupted.

3 ATTY. RUBIN: Please, please, please, please.

4 I'm not looking to create a problem, I'm looking to
5 solve a problem.

6 THE COURT: No, I agree with you. I understand
7 what you're doing in this respect.

8 ATTY. WILLIAMS: Your Honor, it is pending and
9 we do have a right to take discovery before a motion
10 for summary judgment can be decided upon. So that
11 was my point before being interrupted.

12 ATTY. RUBIN: They don't have a right to
13 discovery --

14 ATTY. WILLIAMS: That there is a summary
15 judgment motion pending already.

16 THE COURT: Okay. You know, I think we're going
17 to leave it as is. I will treat this as a motion to
18 dismiss and then we'll let the -- well, let's think
19 about this. What I am wondering is would it not make
20 sense to address a modified summary judgment based on
21 the testimony here?

22 Now, we also -- I mean, we haven't completed the
23 evidence in the injunctive relief hearing either,
24 right?

25 ATTY. WILLIAMS: I'm not sure I understood the
26 first part of what you're asking, Your Honor. I
27 mean, if it's to be treated as a summary judgment

1 motion, as I said, that's the Court's decision to
2 make but we --

3 THE COURT: No, no. I see -- let me -- I am not
4 modifying the motion. I am leaving this as a motion
5 to dismiss and I'll rule on it on that basis. Okay.

6 ATTY. WILLIAMS: Okay.

7 THE COURT: Then we go forward with what the
8 parties deem appropriate. Okay. But I will rule
9 that the evidence in this proceeding is going to be
10 admissible in any other proceeding in this case,
11 we're not going to redo anything, what Attorney
12 Goldberg had to say and Mr. Sheehan and so forth.

13 Let me just say, I've been thinking about this
14 too. In the amended complaint, the requests for
15 temporary and permanent injunction -- this is the
16 wherefore clause -- say, they want a temporary -- the
17 City or the plaintiffs want a temporary or permanent
18 injunction enjoining Wall Street Komi Milligan Real
19 Estate and Mr. Milligan from one, selling, conveying,
20 leasing or sub-leasing, mortgaging, encumbering,
21 assigning, pledging, gifting or otherwise
22 transferring any interests, legal or equitable, in
23 the properties including but not limited to the
24 purported deed and limited transactions in place
25 between Wall Street and Komi.

26 Two. Applying or seeking any permits or
27 approvals from local commissions and agencies -- so

1 forth. Three. Making any material, physical
2 alterations to the properties including but not
3 limited to the removal or creation of improvements,
4 demolition. Or four, acting inconsistently or
5 contrary to the provisions, spirit and intent of the
6 LDA.

7 You know, if you parse some of these things out,
8 the impact of the replacement of the plan is not
9 clear to me on some of these requests because they
10 are -- at least some of them are seeking relief
11 against ongoing violations of the LDA, right? Which
12 is, I think, another reason not to just transform
13 this proceeding now without letting people think
14 about it and analyze it.

15 So I will reserve decision on the motion to
16 dismiss and I think that probably stops the show
17 right now, stops the proceedings, while we have a
18 pending motion to dismiss.

19 ATTY. RUBIN: Right. I guess my point was --
20 and I don't need to be repetitive with it.

21 To the extent that the Court looks at the motion
22 to dismiss and says -- and decides that while the
23 plan has expired and that, as a result, the LDA is no
24 longer operative because it required construction
25 consistent with an expired plan then the injunctive
26 relief that they would be seeking to enforce that LDA
27 would not exist if the Court company-terminously

1 found that Mr. Milligan could still be found liable
2 for damages to the extent they could prove what
3 damages were for interfering with it during the
4 period of time that it was operative, that's fine or
5 it is what it is but it doesn't then make sense to
6 continue with an injunction hearing where the Court
7 finds inherent in the motion to dismiss that the
8 injunctive relief cannot be granted as a matter of
9 law because the LDA no longer is -- the construction
10 obligations are no longer binding.

11 THE COURT: Well, I think rather than
12 speculating what I'm going to rule on and put kind of
13 a fine point on if, then, and so what and so on,
14 let's just see where we come out and we'll -- you
15 know what, I am going to rule and we'll have a status
16 conference. And then we'll discuss where we go.
17 Okay.

18 ATTY. RUBIN: Okay.

19 ATTY. WILLIAMS: On the subject --

20 THE COURT: Because we could kill a lot of time.
21 There are a lot of ways I could go on this and I
22 don't think it's useful.

23 ATTY. WILLIAMS: We have --

24 ATTY. CALLAHAN: Well, Your Honor, may we just
25 be heard on that issue, just to make a record?

26 THE MONITOR: Can you just speak --

27 (Pause)

1 THE COURT: Yes.

2 ATTY. CALLAHAN: Your Honor, just -- and I
3 understand your ruling, I'm just making a record.

4 That we haven't been able to take the deposition
5 of Mr. Milligan yet. We have what we believe is
6 woefully incomplete discovery from the Milligan
7 defendants in written form, interrogatories and
8 production requests.

9 We are in the middle of an injunction hearing
10 that commenced in December last year and we've been
11 halted through multiple motions from -- given to the
12 end of this injunction. And I believe that under the
13 case law the Court does have the discretion to allow
14 the injunction to continue and go into
15 (indiscernible) and take up all these decisions at
16 the same -- all these issues at the same time.

17 They have asserted that they're entitled to an
18 evidentiary hearing. They're only entitled to an
19 evidentiary hearing if there's intertwine of facts
20 related to the subject matter -- to challenge the
21 subject matter jurisdiction. There is case law in
22 those circumstances.

23 The Court has discretion actually to postpone
24 the adjudication on the motion to dismiss after a
25 full trial on the merits. Now I understand the Court
26 would not be inclined to do that but I would request
27 the Court allow the injunction hearing to end.

1 Otherwise, we never get there.

2 THE COURT: it's not going to take me long to
3 issue a decision here. Don't worry about it. I
4 mean, I know what I'm -- I think I know what I'm
5 going to do.

6 ATTY. WILLIAMS: May I, Your Honor?

7 THE COURT: Yeah.

8 ATTY. WILLIAMS: The only thing I wanted to say
9 on the subject of status conference is we haven't
10 filed a brief in opposition to the motion to dismiss
11 because the request was made for this hearing and the
12 hearing was scheduled.

13 THE COURT: Oh. Uh-huh.

14 ATTY. WILLIAMS: So -- and I wanted to be
15 able --

16 THE COURT: You want to do that?

17 ATTY. WILLIAMS: Yes.

18 THE COURT: Okay.

19 ATTY. WILLIAMS: I wanted to be able to do that
20 after this hearing. And so, if everything else is
21 going to wait then I'll do it as fast as we can. I
22 believe I should be able to file it by next Friday,
23 if that's okay.

24 THE COURT: Yeah. All right. Then plaintiffs
25 will file the brief in opposition by May 31st. Do
26 you want to reply?

27 ATTY. RUBIN: I do. But I'm going to want the

1 transcripts, right? We're going to need to point the
2 Court to the transcripts.

3 ATTY. WILLIAMS: I want them too and that's what
4 I'm going to do before I file my brief. Hopefully.

5 THE COURT: Have you been ordering overnights,
6 sir?

7 ATTY. CALLAHAN: We're going to expedite.

8 THE COURT: Yeah. Well, it's two days, right?
9 Less, a day and a half. Shouldn't take too long.

10 ATTY. WILLIAMS: That's fine.

11 THE COURT: All right.

12 ATTY. RUBIN: That's fine. If I could have two
13 weeks thereafter to file my reply?

14 THE COURT: No. We've had enough time. May
15 31st, put in your reply by June 7th.

16 ATTY. WILLIAMS: June 7th. Okay.

17 THE COURT: I agree that there's been a
18 remarkable pattern of dilatory litigation here and
19 we're going to move on.

20 ATTY. CALLAHAN: Thank you, Your Honor.

21 THE COURT: So let's do that.

22 ATTY. WILLIAMS: Thank you.

23 ATTY. RUBIN: Just for the record, I would
24 remind -- Mr. Milligan was ready to testify in
25 December.

26 THE COURT: Yeah. And then you started making
27 these motions to dismiss and do this and that on the

1 day of hearings or the day before hearings so you
2 wait till we're all set to go and you file these
3 motions. And believe me, this is not lost on the
4 Court. So we're going to move forward and then yes,
5 Mr. Milligan will have his day in court, we'll get
6 there. But I'm interested in resolving this matter.

7 ATTY. RUBIN: I would reply that Mr. Milligan
8 was ready to testify and we got a request for leave
9 to amend the complaint at three o'clock in the
10 afternoon the day before. And that -- had that not
11 been filed, this case would have been over within a
12 day or two of then. And the Court deemed that
13 conduct significant enough to award sanctions.

14 THE COURT: That's true.

15 ATTY. RUBIN: So the idea that there's been this
16 delay by Mr. Milligan orchestrated is -- I don't
17 think that that's fair because this would have been
18 done had they either filed the right complaint the
19 first time or waited to file an objection to the
20 motion to strike until after the evidence was done in
21 connection with the temporary injunction.

22 Additionally, all these facts have happened. We
23 didn't -- they're seeking an injunction based on
24 facts and then all these new facts -- this whole case
25 is based on facts that have occurred in February,
26 March, April and May. And so, in the absence of the
27 eureka moment when Mr. Sheehan says yes, it's

1 expired, by the way, the plan has expired and the
2 obtaining of all the minutes and agendas showing
3 yeah, it expired and yeah, this is a new plan and it
4 replace -- whatever it says, none of this happens.

5 So it's not as if we -- the Milligan defendants,
6 had this body of information and carefully
7 orchestrated a manner of delay, the way that this has
8 been put on and the information that is being rolled
9 out by the plaintiffs is the gift that keeps giving.
10 It requires us -- I can't not file a motion to
11 dismiss after that information comes out --

12 THE COURT: And you're saying that interferes
13 with your ability to comply with discovery requests?

14 ATTY. RUBIN: I think that it freezes
15 everything. And I do not --

16 THE COURT: I don't agree.

17 ATTY. RUBIN: -- and to the extent that the
18 Court denies the -- grants the motion to dismiss,
19 Judge, then there's no discovery request to comply
20 with.

21 THE COURT: Right. But that was only -- well,
22 never mind. Let's just proceed. I think we all know
23 what's going on. All right. All right, gentlemen.
24 I will reserve decision, I will await the briefs and
25 will let you know.

26 ATTY. CALLAHAN: Thank you.

27 ATTY. WILLIAMS: Thank you once again, Your

1 Honor.

2 THE COURT: All right.

3 THE CLERK: All rise. Court's in recess.

NO: FST-CV18-6038249-S : SUPERIOR COURT
REDEVELOPMENT AGENCY OF : JUDICIAL DISTRICT OF
THE CITY OF NORWALK : STAMFORD/NORWALK
V. : AT STAMFORD, CONNECTICUT
ILSR OWNERS LLC : MAY 23, 2019

C E R T I F I C A T I O N

Excerpt: Pages 62 - 81

I hereby certify the foregoing pages are a true and correct transcription of the audio recording of the above-referenced case, heard in Superior Court, Judicial District of Stamford/Norwalk at Stamford, Connecticut, before the Honorable Charles T. Lee, Judge, on May 23, 2019.

Dated May 30, 2019 in Stamford, Connecticut.



Lynda Scott
Court Recording Monitor