

1 THURSDAY, AUGUST 22, 2024

2 MORNING SESSION

3 THE COURT: Good morning, everyone.

4 THE CLERK: Miscellaneous Calendar for
5 August 22nd, 2024, WC2024-0402, Robert Patterson,
6 et al versus Carol O'Donnell, et al.

7 Will the attorneys please identify yourselves
8 for the record.

9 MR. FLANDERS: Good morning, Your Honor.
10 Robert Flanders for the Plaintiffs.

11 MR. STONE: Good morning. Kevin Stone for the
12 Plaintiffs.

13 MR. DICKINSON: Thomas Dickinson for all
14 Defendants.

15 THE COURT: Good morning. We're here for
16 decision today.

17 Before this Court for decision is the
18 Plaintiffs' motion for a temporary restraining
19 order and a preliminary injunction seeking to
20 enjoin the Bonnet Shores Fire District from
21 defining the eligibility of the electorate, by the
22 terms of the Eligibility Notice, with respect to
23 the annual meeting scheduled for August 26th, 2024.
24 The Defendants object.

25 Plaintiffs in this action are Robert E.

1 Patterson and Mary Burke Patterson. They live in
2 the Bonnet Shores Fire District and are qualified
3 voters. Defendants are Carol O'Donnell,
4 Marlene Bellini, Steven Danuszar,
5 Anthony DeAngelis, in their individual capacity, as
6 well as their official capacity, as members of the
7 Bonnet Shores Fire District Council and the Fire
8 District -- the Bonnet Shores Fire District.

9 Bonnet Shores Fire District is a Rhode Island
10 fire district incorporated by the General Assembly
11 in 1930. In 2020, Plaintiffs, along with five
12 other residents of the District, brought an action
13 against the District in Patterson, et al, versus
14 the Bonnet Shores Fire District, WC2020-0131 (*sic*),
15 which will be referred to as the first action.

16 In that four-count complaint, Plaintiffs sought
17 declaratory judgment that Section 2 of the Charter
18 unconstitutionally disenfranchised residents who
19 did not own \$400 worth of property, Count I; that
20 the enforcement of Section 2 of the Charter
21 violated 42 U.S.C. Section 1983, Count II; a
22 declaratory judgment that the enforcement of
23 Section 2 of the Charter diluted votes of resident
24 voters because it allowed for nonresident voters to
25 vote, Count III; count -- and the enforcement of

1 Section 2 violated 42 U.S.C. Section 1983 and the
2 Fourteenth Amendment of the Constitution because
3 the Charter failed to tie voter eligibility to any
4 residency requirement, Count IV. In that action,
5 the Court dismissed Count III.

6 The parties to the first action submitted cross
7 motions for summary judgment on the three remaining
8 counts, which this Court decided on January 27th,
9 2022. As to Count I, the Court granted the
10 Plaintiffs' motion finding that the Charter's
11 disenfranchisement of the District residents, on
12 the basis that they did not own the requisite
13 amount of property, violated the constitution of
14 both United States and Rhode Island.

15 With respect to Count II and III, the Court
16 found that the District was acting -- was a person
17 acting under the color of state law but denied the
18 cross motion due to lack of sufficient evidence on
19 the record. In deciding Count IV, the Court
20 determined that it was required to analyze whether
21 the nonresident voters had a substantial interest
22 in the outcome of the complaint.

23 After that action, the parties entered into an
24 eight-paragraph consent judgment. Paragraph 4 of
25 the Consent Judgment provided that, quote, on Count

1 IV of the complaint, judgment shall enter in favor
 2 of the plaintiffs, end quote. Paragraph 5 of the
 3 Consent Judgment reads, quote, promptly upon the
 4 entry of this Consent Judgment, the Bonnet Shores
 5 Fire District Council shall appoint a
 6 Charter Revision Committee consisting of five
 7 persons, at least one of whom shall be one of the
 8 Plaintiffs, to address the issues raised in the
 9 Plaintiffs' complaint and to propose amendments to
 10 the Fire District Charter; such proposed Charter
 11 amendments to be presented for approval, first to
 12 the Rhode Island General Assembly and then to the
 13 voters at an annual or special meeting.

14 The council members voted to adopt the
 15 Consent Judgment on May 18th, 2022. The
 16 Charter Revision Committee was then established, as
 17 required by the Consent Judgment, with Plaintiff,
 18 Robert Patterson, as a member.

19 After multiple public sessions, the revision
 20 committee presented its proposed amendment to the
 21 General Assembly where Defendant O'Donnell
 22 testified in opposition. As of today, the
 23 General Assembly has not enacted the proposed
 24 amendments to the Charter.

25 On October 31st, 2023, the council members

1 passed a resolution stating that the proposed
2 amendments were not in conjunction -- that's a
3 quote -- with the Court's previous rulings. On
4 January 16th, 2024, Plaintiffs, along with others,
5 petitioned this Court to issue a writ of *mandamus*
6 requiring the Defendants to hold a special
7 election, Lloyd Albert, et al, versus Bonnet Shores
8 Fire District, WC2024-0027. That petition was
9 denied on April 24th, 2024.

10 The District, through its council members,
11 released a memorandum which asserted that, quote,
12 anyone who has been eligible to vote under the
13 existing Charter, including members and property
14 owners, are currently eligible to vote at the
15 District meeting. Currently, the District's annual
16 meeting is scheduled to be held on Monday,
17 August 26th, 2024.

18 On July 18th, 2024, the District, through its
19 council members, issued a notice including
20 definitions of who is an eligible voter or who is
21 eligible to vote at the meeting. Plaintiffs
22 contend that -- and that Eligibility Notice was
23 Exhibit 9 to the complaint. Plaintiffs contend
24 that the Defendants issuance of the
25 Eligibility Notice is contemptuous of the

1 Consent Judgment; therefore, they bring this
2 current action, which is in a three-count
3 complaint.

4 In Count I, Plaintiffs allege Defendants are in
5 civil contempt by allowing nonresident voters to be
6 eligible to vote at the annual meeting, which they
7 allege contravenes not only the Consent Judgment
8 but the Fourteenth Amendment of the United States
9 Constitution.

10 In Count II, it is alleged that the new
11 eligibility requirements promulgated in the
12 Eligibility Notice violate 42 U.S.C. 1983 and the
13 Fourteenth Amendment by allowing nonresident
14 property owners to vote and dilute the votes of
15 resident voters.

16 In Count III, Plaintiffs allege that the voter
17 eligibility requirement of Section 2 of the Charter
18 were infamously amended contrary to the process
19 described in Section 9 of the Charter. Plaintiffs
20 have filed this motion for temporary restraining
21 order, preliminary injunction seeking to enjoin the
22 Defendants from allowing a nonresident voter to
23 participate in the election, in the annual meeting.

24 In deciding whether to issue an injunctive
25 relief, the hearing judge should determine whether,

1 one, the moving party has a reasonable likelihood
2 of success on the merits; two, will suffer
3 irreparable harm without the requested relief;
4 three has the balance of equities, including
5 possible hardships to each party and to the public
6 interest in its favor, and has shown that the
7 issuance of a preliminary injunction will preserve
8 the status quo, *Iggy's Doughboys, Inc. v. Giroux*,
9 729 A.2d 701 at 703, Rhode Island 1999. The moving
10 party must only make out a *prima facie* showing of
11 reasonable and likelihood of success on the merits,
12 *Fund for Community Progress*, 695 A.2d at 521. The
13 decision to grant or deny a preliminary injunction
14 lies within the sound discretion of the trial
15 judge, *City of Woonsocket v. Forte Brothers*,
16 642 A.2d 1159 -- 1158 at 1159, 1994.

17 First, we'll discuss reasonable likelihood of
18 success on the merits. Plaintiffs' premises their
19 request for temporary restraining order and
20 preliminary injunction on their ability to
21 demonstrate a reasonable likelihood of success on
22 the merits of their civil contempt count. The
23 authority to find a party in civil contempt is
24 among the inherent powers of our court,
25 *Now Courier, LLC v. Better Carrier Corp.*, 965 A.2d

1 429 and 434, Rhode Island 2009.

2 Our Supreme Court has stated that, quote, the
3 establishment of civil contempt requires that clear
4 and convincing evidence demonstrate that an order
5 of the court sufficiently specific in its directive
6 to the party that has been violated, citing
7 *State v. Lead Industries*, 951 A.2d 428 at 464,
8 Rhode Island 2008.

9 It is further held that noncompliance with a
10 prior court order is not contempt, *per se*, if the
11 alleged contemner has made sufficient efforts to
12 comply with the order, *In Re: NB*, 312 A.3d 428 at
13 437, Rhode Island 2004.

14 The Plaintiffs allege two contemptuous actions.
15 First, it is argued that Defendant O'Donnell,
16 quote, testified in opposition to the proposed
17 amendments and urged that they not be approved by
18 the General Assembly. Plaintiffs maintain that
19 this testimony violated the consent order because
20 it caused the General Assembly to not immediately
21 enact the proposed amendments, Plaintiffs' memo at
22 Page 9, including Footnote 4.

23 A conclusion that the Plaintiff has reasonable
24 likelihood of success on the merits, with respect
25 to this argument, would require this Court to

1 speculate as to the legislative meaning in not
2 enacting -- as to why it did not enact the
3 amendments; therefore, standing alone, without
4 further supporting evidence, this Court cannot
5 conclude that the Plaintiff -- that the Plaintiffs
6 have a reasonable likelihood of success on the
7 merits with respect to this claim of contempt.

8 Plaintiffs additionally argue that the
9 Defendants have violated the Consent Judgment by
10 initially publishing their intention to implement
11 the voting provisions in the Eligibility Notice.
12 The Plaintiffs maintain that the issuance of the
13 Eligibility Notice violates the provisions of
14 Paragraph 4 of the Consent Judgment entered in
15 WC2020-0130 because, as a matter of law, until and
16 unless the Charter's voting provisions were
17 lawfully amended, nonresident participation in
18 District elections unconstitutionally diluted the
19 vote of the District residents.

20 The Plaintiffs point to Paragraph 4 of the
21 Consent Judgment to support their claim. The
22 Defendants, on the other hand, contend that the
23 Consent Judgment addressed the need for the
24 nonresident owners to be heard and the consent
25 order established the process for this. The

1 Defendant's memorandum at 5.

2 It is maintained that the Consent Judgment
3 recognized, quote, the right of residents to vote,
4 while not disenfranchising nonresident property
5 owners. The Defendants point to paragraphs 4 and 5
6 of the Consent Judgment to support this claim.

7 A consent judgment is, in essence, a contract
8 between the parties to the litigation and is to be
9 construed as a contract, *Thompson*, the *Thompson*
10 case, 313 A.3d at 506. Although a consent judgment
11 receives a court's approval, the judgment is, in
12 essence, a contract between the parties to the
13 litigation from which it is derived.

14 (PAUSE)

15 (PEOPLE ENTERING COURTROOM)

16 Such a judgment is to be construed as a
17 contract under the rules of construction that
18 apply, the *Durfee* case, 636 A.2d at 703, when a
19 contract is ambiguous is a question of law,
20 *Peerless Insurance v. Luppe*, 118 A.3d 500 at 506,
21 Rhode Island 2015.

22 In determining whether or not a contract is
23 ambiguous, the Court views the agreement in its
24 entirety giving the words their plain and ordinary
25 meaning, *Family Dollar Stores of Rhode Island v.*

1 *Araujo*, a-r-a-u-j-o, 272 A.3d 582 at 588, quoting
2 *Sturbridge Home Builders*, 890 A.2d 52 at 62.

3 The question of ambiguity focuses on whether
4 the language has only one reasonable meaning when
5 construed in an ordinary, commonsense manner.
6 That's the *Family Dollar Store* case at 588. When
7 determining if an ambiguity is present in a
8 contract, the Court must refrain in engaging in
9 mental gymnastics or from stretching the
10 imagination to read ambiguity into a policy where
11 none is present, *Peerless* case at 508.

12 Ultimately, where the document is unambiguous,
13 the language of the contract itself is controlling
14 in determining the intent of the parties and
15 governs the legal consequences of those provisions,
16 *Family Dollar Stores* at 588.

17 It is firmly settled that the intent of the
18 parties, to a written contract, is contained in the
19 writing itself when the words of the contract are
20 clear and unambiguous. The intent is to be found
21 only in the express language of the agreement,
22 *Young v. Warwick Rollermagic Skating Center, Inc.*,
23 973 A.2d 553 at 560. When a contract is determined
24 to be clear and unambiguous, then the meaning of
25 its terms constitute a question of law for the

1 court, *Young* at 558.

2 (PAUSE)

3 The Court will first note that the parties to
4 the first action were both represented by competent
5 counsel. In addition, these Plaintiffs entered
6 into the Consent Judgment that, according to the
7 clear and unambiguous language, established a
8 procedure to define the electorate within the
9 Bonnet Shores Fire District. Paragraph 1 is clear
10 on its face, as are paragraphs 4 and 5.

11 Paragraph 4 enters judgment in favor of the
12 Plaintiffs with respect to Count IV of the
13 complaint.

14 These plaintiffs who are involved in this
15 action today are the sum of the same Plaintiffs
16 that argued voter dilution in Count IV of the
17 original complaint. It follows that in setting a
18 procedure to address the issues defining the
19 electorate and defining a procedure that there be
20 an acknowledgment of their position with respect to
21 the issues. This was accomplished through the
22 clear language of Paragraph 4.

23 The Court will not look to Paragraph 4 in a
24 vacuum. That would be improper. The
25 Consent Judgment, in Paragraph 4, sets forth the

1 chosen path or mechanism agreed upon to determine
2 the electorate. The clear and unambiguous language
3 provides that the agreed upon mechanism was
4 established -- was to establish a charter committee
5 to address issues raised in the complaint. This
6 would include issues of voter dilution raised in
7 Count IV.

8 The Consent Judgment sets forth the intention
9 of the parties to settle the outstanding issues
10 before the Court and define, as I stated earlier,
11 the electorate. Plaintiffs, at this hearing, aver
12 that Paragraph 5 does not provide the sole remedy
13 for the determination that nonresident property
14 owners have voting rights. If the Court were to
15 accept that proposition and conclude the
16 Consent Judgment contemplated the
17 disenfranchisement, it would render the
18 Consent Judgment a suggestion.

19 Here, the parties acknowledge -- here, the
20 parties acknowledge that the method set forth in
21 the Charter created voter dilution, include
22 negotiations and agreements, determine their
23 desired method of resolution. While the Court had
24 no role in the process, it would be reasonable to
25 assume that the Plaintiffs would have asserted such

1 acknowledgment -- would not have asserted such
2 acknowledgment in the judgment. For today,
3 however, this is neither here nor there.

4 The course of action Plaintiffs chose to pursue
5 was to enter into the Consent Judgment, and they
6 are bound by the terms. A party may not escape its
7 obligation simply because one of the parties may
8 not consider the agreement to be what they want
9 now, *Andrews v. Lombardi*, 231 A.3d 1108, 1119.

10 With respect to the elections -- strike that.
11 What happens with respect to the elections, in the
12 interim after the process in Paragraph 5 fails, is
13 really the bottom line here. The Court will follow
14 the clear intention of the parties set forth in the
15 Consent Judgment. The parties' intention to
16 include nonresident voters was clearly set forth in
17 Paragraph 5 with the use of the language, quote,
18 address the issues reserved in the Plaintiffs'
19 complaint.

20 Quite frankly, the list of issues was not
21 cumbersome, and front and center was the issue of
22 voter dilution; therefore, that category of voters
23 was clearly contemplated in the settlement.
24 Plaintiffs' position would clearly disenfranchise
25 this category of voters. Such a position does not

1 reflect the clear intention of the parties after
2 construing the Consent Judgment in an ordinary,
3 commonsense manner; therefore, the Court concludes
4 that the Plaintiffs have failed to demonstrate a
5 reasonable likelihood of success on the merits that
6 the Defendants violated the Consent Judgment by
7 virtue of promulgating the Eligibility Notice.

8 Plaintiffs maintain through the -- I'll discuss
9 irreparable harm. Plaintiffs maintain, through
10 this action, the claim of voter dilution. The
11 Plaintiffs fail to produce, really, a scant of
12 evidence to support this claim. In fact, the
13 solution -- their solution, is simply to
14 disenfranchise these voters and they have a vote
15 and have failed to demonstrate irreparable harm.

16 The balance of the equities, including possible
17 hardships, tip in favor of the Defendants. The
18 Plaintiffs did file this motion on the eve of the
19 election. The courts are, indeed, reluctant to
20 intervene in an election at the last minute under
21 the *Purcell* case, 549 U.S. 1. Public policy does,
22 indeed, favor the holding of elections.

23 Here, based upon a review of the papers and
24 arguments and analysis, the Court concludes that
25 the Plaintiffs' motion for a temporary restraining

1 order and preliminary injunction are denied. The
2 annual meeting and election shall proceed on
3 August 26th, 2024. Until the Charter is amended,
4 qualified voters are those eligible under Charter
5 plus, quote, residents and homeowners identified in
6 Paragraph 1 of the complaint.

7 Counsel, please prepare the appropriate order.
8 This concludes the Court's decision. Thank you.

9 MR. DICKINSON: Thank you.

10 (MATTER ADJOURNED)

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

I, Kathleen A. Costello, hereby certify that the succeeding pages, 1 through 16, are a true and accurate transcription of my stenographic notes.

**Kathleen A.
Costello, RMR**

Digitally signed by
Kathleen A. Costello,
RMR
Date: 2024.08.23
14:56:37 -04'00'

Kathleen A. Costello, RMR
Court Stenographer