

Docket No. KNL-CV-16-6027254-S	:	CONNECTICUT SUPERIOR COURT
TOWN OF LEDYARD, ET AL., Plaintiffs,	:	J.D. NEW LONDON
v.	:	AT NEW LONDON
PERKINS PROPERTIES, LLC, Defendant	:	NOVEMBER 15, 2017

MEMORANDUM OF DECISION ON MOTION FOR CONTEMPT (#106)

This case was brought by the plaintiffs Town of Ledyard and Joseph Larkin in his capacity as the town's zoning enforcement officer against the defendant, Perkins Properties, LLC, by a verified complaint dated June 21, 2016. On December 1, 2016, judgment (Judgment) entered upon the October 27, 2016, written stipulation of the parties. The stipulated Judgment enjoined the defendant "from operating a landscaping business, lawn care business, snow removal business, or other similar commercial operation (collectively, 'commercial activity') on the property known as 576 Lantern Hill Road in the Town of Ledyard, Connecticut ('the property')." Specific examples of prohibited activities, and a minimum fine of \$250 for each day's violation of the injunction are provided in the Judgment, as is the agreement, and judgment, that any violation of the Judgment shall constitute a willful violation of the Ledyard zoning regulations. General Statutes § 8-12 provides that a person convicted of willful violation of municipal zoning regulations shall be fined not more than \$250 for each day such violation continues.

On February 8, 2017, the plaintiff moved for contempt (Docket Entry no. 106). The defendant timely objected (Docket Entry no. 107) and the motion was heard and submitted on April 4, 2017. The court apologizes for the delay in issuing this ruling.

Practice Book § 1-21A provides: "The violation of any court order qualifies for criminal contempt sanctions. Where, however, the dispute is between private litigants and the purpose for judicial intervention is remedial, then the contempt is civil, and any sanctions imposed by the judicial authority shall be coercive and nonpunitive, including fines, to ensure compliance and compensate the complainant for losses."

Our Supreme Court has "adopt[ed] the clear and convincing evidence standard of proof for indirect civil contempt proceedings." *Brody v. Brody*, 315 Conn. 300, 316, 105 A.3d 887 (2015). "[A]n indirect contempt of court [is one which] occurs outside the presence of the trial court." (Internal quotation marks omitted.) *Id.*, 317. The clear and convincing evidence

11/15/17 - Copies mailed to: Taker & Landolina for Town of Ledyard & Joseph Larkin; Matthew G. Berger for Perkins Properties; Anthony & Bonnie for Larkin & Jennifer Day; Reports of Judicial Decisions - R.M.

standard means, in this court's view, that the court should not, base a finding only on inferences from past acts of the alleged contemnor, including its stipulation to an injunction, let alone inferences from past complaints such as the verified complaint in this case or the cease and desist order alleged in the complaint.

To begin, the evidence at the hearing showed that Mark Perkins is the principal and controlling owner of the defendant Perkins Properties, LLC. Mr. Perkins admitted during the hearing that he reviewed the stipulation to judgment with his/the defendant's attorney and understood it. Again, the stipulation provides that any violation of the Ledyard zoning regulations enjoined by the stipulation would be willful.

Mark Perkins operates at least one other business, Perkins Lawn Care. Mark Perkins, either directly or through Perkins Lawn Care, operated a snowplowing business in the winter of 2016-17. (The defendant did not defend against the motion by claiming that it was Mr. Perkins or Perkins Lawn Care, and not the enjoined defendant, which engaged in any prohibited commercial activity at the property or that any commercial activity that did occur was not permitted by the defendant.) The parties stipulated that operating a snowplowing business at the property would violate the judgment.

By the clear and convincing evidence standard, the court finds that the defendant violated the injunction in the judgment in this case on nine days in early 2017: January 5, 6, 9, 10, and 31; February 7; and March 10, 13 and 20. Mark Perkins admitted to his snow plowing business employees "checking in" at the property. There was testimony, which the court believes, that activity similar to that proven on the foregoing days was seen on "other occasions" during the winter of 2016 – 17. However, the clear and convincing evidence standard forbids the findings of specific other dates or the range of dates by inference. In addition, the court concludes that ordering a fine based on extrapolation from the limited specific evidence in this case would be inequitable.

The defendant's evidence included a certificate of zoning compliance dated February 23, 2017, and issued by the co-plaintiff zoning enforcement officer concerning the subject property.¹ See Def.'s Ex. A. That Mr. Larkin found no violation on the day of such inspection is no basis for this court to find the town's evidence unpersuasive by the clear and convincing standard of

¹ Neither side claimed that the issuance of this certificate "To: Mark Perkins," and not to the defendant, mattered.

proof, or at all. Indeed, Mr. Larkin testified that "for the most part" he has not seen violations of the injunction.

For nine days of proven violations of the Judgment in this case, the Town's motion is granted and the Town is awarded the sum of \$2,250.00 in fines pursuant to the agreed Judgment and General Statutes § 8-12; plus \$1,000.00 in attorneys' fees; plus costs to be taxed. Post-judgment interest is, in the court's discretion, not awarded.


Felix Cole
Cole, Chu, J.