

DOCKET NO. KNL CV 12 6018984 : SUPERIOR COURT
LBI, INC. : J.D. OF NEW LONDON
VS. : AT NEW LONDON
JARED SPARKS, ET AL : JULY 6, 2015

MEMORANDUM OF DECISION RE: Motion for Summary Judgment (#172)

ISSUE

The issue presented is whether the court should grant the defendant Jared Dylan Sparks' motion for summary judgment on the grounds that the plaintiff, LBI, Inc.'s, claims against the defendant Sparks are barred by res judicata, by an agreement between the parties and a consent order entered by the United States District Court for the District of Connecticut, and by accord and satisfaction.

FACTS

The record reveals the following facts and procedural history. On March 1, 2012, the plaintiff commenced this action in the Judicial District of Waterbury for breach of contract, breach of duty of loyalty, misappropriation of trade secrets, and tortious interference with business and contractual relations by service of process on the defendants Jared Dylan Sparks and Jay Williams, the plaintiff's former employees. On the same date, the plaintiff moved for a temporary injunction,

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of record

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SUPERIOR COURT - NEW LONDON
JUDICIAL DISTRICT AT NEW LONDON

in accordance with its prayer for relief in its verified complaint.¹ On March 23, 2012, prior to a hearing on the motion for temporary injunction, the defendants filed a notice of removal and the case was removed to the United States District Court for the District of Connecticut (District Court). On June 26, 2012, prior to a hearing before the District Court on the plaintiff's motion for temporary injunction, the plaintiff and the defendant Sparks jointly moved for the entry of a consent order, which, among other things, narrowed the scope of the hearing to only the claims against the defendant Williams. On June 27, 2012, the District Court granted the joint motion and ordered the entry of the consent order. The consent order stated in pertinent part: "This matter has come before the Court on the [plaintiff's] Complaint and application for a preliminary injunction against [the defendant Sparks]" Further, it stated: "Upon the completion of the forensic review and production, this Order shall become judgment resolving the claims against [the defendant Sparks]." On July 24, 2012, the defendant Sparks certified to the plaintiff that a forensic review of his computer, as required by the consent order, was completed.²

On July 25, 2012, the District Court granted the plaintiff's motion for temporary injunction

¹ The pertinent relief reads as follows: "1. Temporary and permanent injunctive relief, including but not limited to the following: a. An order enjoining the defendants from owning, managing, operating, consulting, or being employed in a business substantially similar to, or competitive with, the present business of [the plaintiff] or such other business activity in which [the plaintiff] substantially engaged during the term of the defendants' employment, in violation of their Noncompete Agreements, for a period of twelve (12) months; b. An order that the defendants immediately return and forever cease and desist from utilizing files, data, plans, records, customer information, training materials, trade secrets, or any other confidential and proprietary information owned by the plaintiff and acquired by the defendants for their own benefit or to benefit a competitor of the plaintiff; c. An order permanently enjoining the defendants from the use or disclosure of [the] plaintiff's trade secrets or confidential and proprietary information"

² There is no dispute that the defendant Sparks complied with the terms of the consent order in a timely manner.

against the defendant Williams, and on July 26, 2012, the defendant Williams appealed this ruling to the United States Court of Appeals for the Second Circuit. Also on July 26, 2012, the District Court entered its Order Modifying Ruling re: Plaintiff's Motion for Preliminary Injunction and Ruling Denying Motion to Stay, which the plaintiff cross-appealed on August 23, 2012. On September 20, 2012, the United States Court of Appeals for the Second Circuit dismissed the appeals, remanded the case to the District Court with instructions to vacate its decision regarding the plaintiff's motion for temporary injunction and to remand the case to the Connecticut Superior Court, and denied the motions as moot. The matter was recorded as remanded on November 14, 2012.³ On December 6, 2012, the plaintiff moved to cite Charles River Analytics (CRA) as a defendant and to amend its original complaint. The Superior Court granted that motion on April 9, 2013, and on April 30, 2013, the plaintiff filed its second amended complaint, which now serves as the operative complaint. In addition to the original claims, the plaintiff added several claims against the defendant Sparks: violation of General Statutes §§ 53a-251 (e) and 52-570b; abuse of process; and civil conspiracy.

The following is a brief summary of the facts alleged by the plaintiff in its second amended complaint. On or about January 4, 2010, the plaintiff hired the defendant Sparks as an electrical engineer. As part of their employment agreement, the defendant Sparks executed a nondisclosure agreement and a noncompete agreement. While employed by the plaintiff, the defendant Sparks worked extensively on a contract issued by the Office of Naval Research (ONR). From about 2009 through 2011, the plaintiff collaborated with the defendant CRA on a particular ONR program,

³ The case was transferred from the Judicial District of Waterbury to the Judicial District of New London on October 1, 2013.

which included the contract cited above. Sometime during 2011, the defendants CRA and Sparks conspired to achieve several objectives, including appropriating the plaintiff's trade secrets and ending the defendant Sparks' employment with the plaintiff so he could work for the defendant CRA instead. One of the major results of this alleged conspiracy was that the ONR awarded the defendant CRA—instead of the plaintiff—a subsequent contract to continue the work that the plaintiff had begun via the contract that the defendant Sparks worked on during his employment with the plaintiff.

Despite the remand, on December 11, 2013, the plaintiff moved in District Court to vacate its order granting the parties' consent order; however, the court denied the motion. In its ruling, the District Court listed several reasons for denying the plaintiff's motion to vacate the consent order. First, the District Court did not have subject matter jurisdiction over the matter at the time of the plaintiff's motion. Second, the United States Court of Appeals for the Second Circuit's mandate did not direct the District Court to vacate the consent order, nor did the plaintiff appeal the order prior to remand when the District Court had jurisdiction. Third, the District Court refused to award the plaintiff's requests for relief when the plaintiff waited to complain about the jurisdictional defect until after it had reaped the benefits of its bargain through the defendant Sparks' substantial performance. Finally, the District Court found the plaintiff's filing of its motion to vacate over a year after the United States Court of Appeals for the Second Circuit's mandate unreasonable in light of the absence of any excuse for the delay and the prejudice to the defendant Sparks.

On November 12, 2014, the defendant Sparks moved for summary judgment on the grounds that the plaintiff's claims against him are barred by res judicata, by the agreement between the parties and the consent order entered by the District Court, and by accord and satisfaction. The defendant Sparks submitted a memorandum of law, an affidavit, and exhibits in support of his motion. In

response, on January 12, 2015, the plaintiff filed an objection to the motion for summary judgment, along with a memorandum of law, an affidavit, and exhibits. The defendant Sparks submitted a reply memorandum on February 2, 2015, and the matter was heard at short calendar on March 16, 2015. Additional facts will be provided where necessary.

DISCUSSION

“Summary judgment is a method of resolving litigation when pleadings, affidavits, and any other proof submitted show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” (Internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, 306 Conn. 523, 534, 51 A.3d 367 (2012). “The courts are in entire agreement that the moving party for summary judgment has the burden of showing the absence of any genuine issue as to all the material facts, which, under applicable principles of substantive law, entitle him to a judgment as a matter of law.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, 310 Conn. 304, 320, 77 A.3d 726 (2013). “As the burden of proof is on the movant, the evidence must be viewed in the light most favorable to the opponent.” (Internal quotation marks omitted.) *Id.* “[S]ince litigants ordinarily have a constitutional right to have issues of fact decided by a jury . . . the moving party for summary judgment is held to a strict standard . . . of demonstrating his entitlement to summary judgment.” (Internal quotation marks omitted.) *Grenier v. Commissioner of Transportation*, *supra*, 535.

“A motion for summary judgment shall be supported by such documents as may be appropriate, including but not limited to affidavits, certified transcripts of testimony under oath, disclosures, written admissions and the like.” Practice Book § 17-45. “When documents

submitted in support of a motion for summary judgment fail to establish that there is no genuine issue of material fact, the nonmoving party has no obligation to submit documents establishing the existence of such an issue.” (Internal quotation marks omitted.) *Rompney v. Safeco Ins. Co. of America*, supra, 310 Conn. 320. “Once the moving party has met its burden, however, the opposing party must present evidence that demonstrates the existence of some disputed factual issue.” (Internal quotation marks omitted.) *Id.*

I Res Judicata

The defendant Sparks first argues that the doctrine of res judicata precludes the plaintiff’s claims against him because the consent order, agreed to by the parties and ordered by the District Court, is a final judgment. The consent order expressly states that once the defendant Sparks completed the agreed upon terms contained therein, the consent order “shall become judgment resolving the claims against [him].” The defendant Sparks argues that there is no dispute that he complied with and completed the terms of the consent order; therefore, it is a judgment that is subject to res judicata because the plaintiff’s operative complaint involves the same parties and the same causes of action as the original complaint resolved by the consent order.

In response, the plaintiff argues that the doctrine of res judicata does not apply because the remand to Superior Court is not a subsequent separate lawsuit and because the claims for monetary damages pending against the defendant Sparks were not subject to any final judgment in earlier litigation. Further, the plaintiff argues that a final judgment as to the defendant Sparks was never actually entered because there is no entry of judgment on the District Court docket nor an entry of termination of the defendant Sparks as a defendant in the case. In response, the

defendant Sparks argues that res judicata applies because a judgment entered in federal court has preclusive effect on the same matter after it has been remanded to state court.

“[S]ummary judgment is an appropriate vehicle for raising a claim of res judicata” (Citations omitted.) *Joe’s Pizza, Inc. v. Aetna Life & Casualty Co.*, 236 Conn. 863, 867 n.8, 675 A.2d 441 (1996). “The principles underlying the doctrine of res judicata, or claim preclusion, are well settled. A valid, final judgment rendered on the merits by a court of competent jurisdiction is an absolute bar to a subsequent action between the same parties, or those in privity with them, upon the same claim or demand.” (Internal quotation marks omitted.) *Gaynor v. Payne*, 261 Conn. 585, 595-96, 804 A.2d 170 (2002).

First, the court must determine whether the consent order entered by the parties is a final judgment. “[A consent] order is accorded the same degree of finality and binding force as a final judgment rendered at the conclusion of an adversary proceeding.” (Footnote omitted.) 46 Am. Jur. 2d 542, Judgments § 199 (2006). “A judgment by consent is in effect an admission by the parties that the decree is a just determination of their rights on the real facts of the case had they been found. It is ordinarily absolutely conclusive between the parties and cannot be appealed from or reviewed on a writ of error.” *Shaw v. Spelke*, 110 Conn. 208, 215, 147 A. 675 (1929). “Where there is no language in the consent order reflecting it to be anything other than a final judgment and the court does not leave for future adjudication any claims as between the parties, the consent order is final.” 46 Am. Jur. 2d, *supra*, § 199, p. 542.

“Consent decrees and orders have attributes both of judicial decrees and of contracts.” *Gagne v. Norton*, 189 Conn. 29, 31, 453 A.2d 1162 (1983). “A valid judgment or decree entered by agreement or consent operates as res judicata to the same extent as a judgment or decree

rendered after answer and contest.” *Id.*, 31. A consent decree, also called a stipulated judgment, is not a judicial determination of any litigated right even though it is enforceable like any other judicial decree. See *Bryan v. Reynolds*, 143 Conn. 456, 460, 123 A.2d 192 (1956). “It may be defined as a contract of the parties acknowledged in open court and ordered to be recorded by a court of competent jurisdiction. . . . It is the result of a contract and its embodiment in a form which places it and the matters covered by it beyond further controversy. . . . The essence of the judgment is that the parties to the litigation have voluntarily entered into an agreement setting their dispute or disputes at rest and that, upon this agreement, the court has entered judgment conforming to the terms of the agreement.” (Citations omitted; internal quotation marks omitted.) *Id.*

In the present case, the parties voluntarily entered into the consent order, after several rounds of negotiations, and they jointly moved the District Court to enter the order, which it did. Once the District Court ordered the entry of the consent order, it was poised to become a final judgment upon the completion of its terms. By the express language of the consent order, once the defendant Sparks “[completed] the forensic review and production, [the consent order] [would] become judgment resolving the claims against [the defendant Sparks].” There is no factual dispute that the defendant Sparks timely complied with the terms of the consent order. Therefore, at the time the present motion was filed, the consent order was a final judgment as conclusive as if it had been rendered upon controverted facts.

Second, the court must determine whether the consent order was rendered by a court of competent jurisdiction. According to Black’s Law Dictionary, a court of competent jurisdiction is one that “has the power and authority to do a particular act [and] one recognized by law as

possessing the right to adjudicate a controversy.” Black’s Law Dictionary (10th Ed. 2014). It is well-settled that “district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.” 28 U.S.C. § 1331 (2012). The Connecticut Supreme Court has “held that res judicata precludes state court relitigation of matters fully litigated in federal court.” *McCarthy v. Warden, State Prison*, 213 Conn. 289, 295, 567 A.2d 1187 (1989) (citing *Virgo v. Lyons*, 209 Conn. 497, 501-502, 551 A.2d 1243 (1988)), cert. denied, 496 U.S. 939, 110 S. Ct. 3220, 110 L. Ed. 2d 667 (1990). Further, the Connecticut Appellate Court has held that the doctrine of res judicata allows a trial court to give preclusive effect to a judgment of the District Court entered prior to the remand of a case. See *Massad v. Greaves*, 116 Conn. App. 672, 681, 977 A.2d 662, cert. denied, 293 Conn. 938, 981 A.2d 1079 (2009), cert. denied, 560 U.S. 904, 130 S. Ct. 3276, 176 L. Ed. 2d 1183 (2010).

When the District Court ordered the entry of the consent order in the present case, it still had subject matter jurisdiction over the matter, based on a federal question. After the consent order was entered, the United States Court of Appeals for the Second Circuit instructed the District Court to remand the case back to Superior Court for a lack of subject matter jurisdiction, but it did not instruct the District Court to vacate the consent order. Because the District Court had subject matter jurisdiction over the matter at the time it entered the consent order and because a trial court can give preclusive effect to judgments entered by the District Court prior to remand, the District Court in the present case was a court of competent jurisdiction when it entered the consent order.

Third, the court must determine whether the subsequent action is between the same parties, or those in privity with them. In the present case, neither party has disputed that the

defendant Sparks and the plaintiff were both parties to the District Court action, were the parties that entered into the consent order in District Court, are both parties to the present action, and are the parties to the present motion. Therefore, the subsequent action is between the same parties.

Fourth, the court must determine whether the subsequent action is made upon the same claim or demand. Res judicata precludes not only subsequent relitigation of a previously asserted claim, but, more broadly, “[i]f the same cause of action is again sued on, the judgment is a bar with respect to any claims relating to the cause of action which were actually made or which might have been made.” *Wade’s Dairy, Inc. v. Fairfield*, 181 Conn. 556, 559-60, 436 A.2d 24 (1980). Under Connecticut law, “[e]ven though a single group of facts may give rise to rights for several different kinds of relief, it is still a single cause of action.” *Id.*, 560. “[A plaintiff cannot] pursue a second action for monetary damages after securing injunctive relief in a suit arising out of the same cause of action.” *Gagne v. Norton*, supra, 189 Conn. 32. In deciding “whether an action involves the same claim as prior action such that it triggers the doctrine of res judicata,” the Connecticut Supreme Court “has adopted a transactional test.” *Weiss v. Weiss*, 297 Conn. 446, 461, 998 A.2d 766 (2010).

When the parties have entered into a consent order that has in turn become a stipulated judgment, however, courts look to the scope of the language of the consent order itself to determine the reach of its preclusive effect. See *Connecticut Water Co. v. Beausoleil*, 204 Conn. 38, 49, 526 A.2d 1329 (1987) (citing *Gagne v. Norton*, supra, 189 Conn. 34-35). “In order to determine what litigation the plaintiff was precluded from pursuing after it had signed the stipulation, [the court] must first determine the true scope of the agreement.” *Connecticut Water Co. v. Beausoleil*, supra, 49. “The terms of a stipulated judgment may not be extended beyond

the agreement entered into.” (Internal quotation marks omitted.) *Id.* “Because a consent decree represents a settlement of the controversy by the parties thereto [however] it is usually presumed that the parties intended to settle all aspects of the controversy, including all issues raised by the papers comprising the record.” *Gagne v. Norton*, *supra*, 34. “The rationale for such a presumption emanates from the understanding that parties generally enter into a stipulated judgment only after careful negotiation has produced agreement on their precise terms.” (Internal quotation marks omitted.) *Przekopski v. Zoning Board of Appeals of Colchester*, 131 Conn. App. 178, 187, 26 A.3d 657, cert. denied, 302 Conn. 946, 30 A.3d 1 (2011). “[I]n the absence of language evidencing an intent to preserve specific issues or claims for further litigation, it is presumed that the parties intended for the stipulated judgment to resolve all contested issues and claims raised in the record.” *Id.*, 186. “If the [consent order] was intended by the parties to dispose only of [certain matters] rather than the entire controversy, then extrinsic evidence [can be] offered to show the true scope of the agreement.” *Gagne v. Norton*, *supra*, 34-35.

In the present case, the defendant Sparks submitted a copy of the consent order itself, which serves as evidence of the scope of the agreement. After reviewing the order, the court concludes that it does not contain any language evidencing that the parties intended to preserve the claims for monetary damages for subsequent litigation beyond the consent order. While the plaintiff argues that the claims for monetary damages were not subject to a final judgment in this case, the language of the consent order itself proves otherwise. First, the opening line of the order states, “[t]his matter has come before the Court on the [plaintiff’s] *Complaint* and application for a preliminary injunction against the [defendant Sparks]” (Emphasis added.) The express language of the consent order incorporates the plaintiff’s original complaint, which

included the plaintiff's claims for monetary damages against the defendant Sparks. Second, the final paragraph of the consent order states, "[u]pon completion of the forensic review and production, this Order shall become judgment resolving the claims against [the defendant Sparks]." This language is broad enough to include the claims for monetary damages, especially within the context of the earlier reference to the plaintiff's complaint, and there is no language evidencing that the parties intended preserve the issue of the claims for monetary damages.

The plaintiff does not argue that it has submitted extrinsic evidence demonstrating that the parties intended the scope of the agreement to encompass fewer than all of the aspects of the controversy, as is to be presumed. Upon review of the evidence the plaintiff submitted with or incorporated into its objection to the present motion, however, there are several pieces of evidence that warrant discussion here. First, the plaintiff incorporated by reference a set of emails and drafts of the consent order, which the parties exchanged during their negotiations of the consent order. While the plaintiff's counsel refers to the consent order as a "stipulated injunction order" at one point during the negotiations, there is nothing contained within these emails that demonstrates that, when drafting and entering into the consent order, the parties intended to limit or define the term "the claims" to be something less than all of the claims, or that they intended to limit the scope of the consent order to settle something less than the entire controversy between them.

Second, the plaintiff submitted a portion of the transcript from the preliminary injunction hearing before the District Court on June 28, 2012, and incorporated a portion of the transcript from the District Court's ruling on the preliminary injunction on July 25, 2012, to demonstrate disagreement between the parties as to how the consent order would affect the defendant Sparks'

status as a defendant to the litigation. Similarly, while these transcript portions may demonstrate disagreement among the parties as to the effect of the consent order after it was agreed to and entered, they do not demonstrate that the parties intended to limit the language of the consent order to exclude the plaintiff's claims for monetary damages or to limit the scope of the consent order to settling less than all aspects of the controversy between the parties.

Finally, the plaintiff incorporated by reference its memorandum of law in support of its Motion to Cite in Defendant and Amend the Complaint to demonstrate that the defendant Sparks remained a defendant in the case after the consent order was entered and after remand. Again, while this evidence may demonstrate the plaintiff's interpretation of the effect of the consent order, it does not demonstrate that the parties intended the scope of the consent order to settle something less than all aspects of the controversy. The contents of this motion and the plaintiff's complaint were in the plaintiff's sole control, were filed and amended after the consent order was entered, and the defendant Sparks objects to his continuing presence as a defendant in this action. The plaintiff's actions after the entry of the consent order may inform the court about the plaintiff's interpretation of the effect of the consent order, but it does not inform the court about the parties' agreed-upon intentions regarding scope when entering into the consent order.

The parties in this action are commercially sophisticated and are represented by excellent and experienced counsel who engaged in several rounds of negotiations before concluding the language and scope of the consent order. If the plaintiff wanted to limit the scope of the consent order to exclude the claims for monetary damages against Sparks, it could have and should have negotiated for the addition of language to this effect or it should not have voluntarily entered into the present agreement. Consequently, in the absence of language evidencing an exclusion of the

claims for monetary damages or extrinsic evidence that demonstrates that the parties intended to limit the scope of the consent order to something less than all aspects of the controversy *at the time of the signing and submission of the Consent Order*, the current positions notwithstanding. The consent order evidences the parties' intent to settle all aspects of the controversy between them.

Furthermore, the preclusive effect of the consent order is further supported by the policies underlying the doctrine of res judicata—a sense of finality and stability, the prevention of inconsistent judgments, and the provision of repose—and the presumption of complete settlement when parties voluntarily enter into an agreement after careful negotiation. See *Delahunty v. Massachusetts Mutual Life Ins. Co.*, 236 Conn. 582, 591, 674 A.2d 1290 (1996); *Przekopski v. Zoning Board of Appeals of Colchester*, supra, 131 Conn. App. 186-87.

Because the defendant Sparks has demonstrated that there is no genuine issue of material fact as to whether the claims against him are barred by res judicata, and because the plaintiff has not demonstrated a genuine issue of material fact to the contrary, the defendant Sparks' motion for summary judgment is granted as to this ground.

II

Prior Agreement and Order

The defendant Sparks also argues that summary judgment should enter in his favor because the consent order between the parties is a valid agreement and a valid order of the court with clear and unambiguous terms as to the resolution of the litigation against him. Specifically, the consent order is not limited to the resolution of just the request for a preliminary injunction

because there is no such limitation in the terms of the agreement/order; because the opening paragraph of the consent order states that the matter was before the District Court on the plaintiff's complaint and application for a preliminary injunction; and because the language of the final paragraph of the consent order, which states that the "[o]rder shall become judgment resolving the claims against [the defendant Sparks]," is clear and would be superfluous to the consent order if it only pertained to injunctive relief because the terms of the order are broader than the plaintiff's application for a preliminary injunction. Further, even if the court finds that the terms of the consent order are ambiguous, the parol evidence of the parties' settlement negotiations demonstrates that the terms of the consent order unambiguously resolve all of the claims against the defendant Sparks.

In response, the plaintiff argues that there remains a genuine issue of material fact as to what the terms of the agreement between the parties actually mean. First, the plaintiff argues that the consent order does not explicitly state that it resolves the plaintiff's claims for monetary damages. The plaintiff argues that the reference to its complaint does not equate to a reference to its monetary damages claims because in order to bring a temporary injunction before the court, General Statutes § 52-471 et seq. requires the filing of a verified complaint. Further, the plaintiff argues that its interpretation of the language of the consent order as excluding claims for monetary damages is as equally possible as the defendant Sparks' interpretation, and so the language of the final paragraph should be construed against the defendant Sparks because he drafted it.

Second, the plaintiff argues that there was no meeting of the minds between the parties as to the agreement underlying the consent order because it contains no definite or certain terms as

to the alleged resolution of the plaintiff's claims for monetary damages. As evidence of this misunderstanding between the parties, the plaintiff points to the discrepancies in labeling the consent order during negotiations and the disagreement as to the effect of the consent order during the preliminary injunction hearing in District Court. Further, the plaintiff argues that just because the terms of the consent order could be viewed as broader than the plaintiff's application for a preliminary injunction, this interpretation does not necessarily mean that the defendant Sparks entered into the consent order to resolve more than the claims for injunctive relief. Finally, the plaintiff argues that its motion to vacate the consent order does not mean that it understood the terms of the order to resolve the case against the defendant Sparks.

“A settlement agreement is a contract among the parties.” (Internal quotation marks omitted.) *Amica Mutual Ins. Co. v. Welch Enterprises, Inc.*, 114 Conn. App. 290, 294, 970 A.2d 730 (2009). “In ascertaining the contractual rights and obligations of the parties, [the court seeks] to effectuate their intent, which is derived from the language employed in the contract, taking into consideration the circumstances of the parties and the transaction.” *Cantonbury Heights Condominium Assn., Inc. v. Local Land Development, LLC*, 273 Conn. 724, 734, 873 A.2d 898 (2005). “It is well settled that [w]here the language of the contract is clear and unambiguous, the contract is to be given effect according to its terms.” (Internal quotation marks omitted.) *Amica Mutual Ins. Co. v. Welch Enterprises, Inc.*, *supra*, 294. “A trial court has the inherent power to enforce summarily a settlement agreement as a matter of law when the terms of the agreement are clear and unambiguous.” *Audubon Parking Associates Ltd. Partnership v. Barclay & Stubbs, Inc.*, 225 Conn. 804, 811, 626 A.2d 729 (1993).

“A contract is unambiguous when its language is clear and conveys a definite and precise

intent. . . . The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity. . . . Moreover, the mere fact that the parties advance different interpretations of the language in question does not necessitate a conclusion that the language is ambiguous. . . . Furthermore, a presumption that the language used is definitive arises when . . . the contract at issue is between sophisticated parties and is commercial in nature. . . . In contrast, a contract is ambiguous if the intent of the parties is not clear and certain from the language of the contract itself. . . . [A]ny ambiguity in a contract must emanate from the language used by the parties. . . . The contract must be viewed in its entirety, with each provision read in light of the other provisions . . . and every provision must be given effect if it is possible to do so. . . . If the language of the contract is susceptible to more than one reasonable interpretation, the contract is ambiguous.” (Citations omitted; internal quotation marks omitted.) *United Illuminating Co. v. Wisvest–Connecticut, LLC*, 259 Conn. 665, 670–71, 791 A.2d 546 (2002). “[T]he law of contract interpretation . . . militates against interpreting a contract in a way that renders a provision superfluous.” (Internal quotation marks omitted.) *Ramirez v. Health Net of the Northeast, Inc.*, 285 Conn. 1, 14, 938 A.2d 576 (2008).

“[C]ourts do not unmake bargains unwisely made. Absent other infirmities, bargains moved on calculated considerations, and whether provident or improvident, are entitled nevertheless to sanctions of the law.” (Internal quotation marks omitted.) *Neubig v. Luanci Construction, LLC*, 124 Conn. App. 425, 432, 4 A.3d 1273 (2010). The Connecticut Supreme Court “long [has] held that when the parties have deliberately put their engagements into writing, in such terms as import a legal obligation, without any uncertainty as to the object or extent of such engagement, it is conclusively presumed, that the whole engagement of the parties, and the

extent and manner of their understanding, was reduced to writing.” (Internal quotation marks omitted.) *Tallmadge Bros., Inc. v. Iroquois Gas Transmission System, L.P.*, 252 Conn. 479, 502, 746 A.2d 1277 (2000). “The circumstances surrounding the making of a contract, the purposes which the parties sought to accomplish and their motives cannot prove an intent contrary to the plain meaning of the language used.” (Internal quotation marks omitted.) *Levine v. Massey*, 232 Conn. 272, 279, 654 A.2d 737 (1995).

In the present case, the terms of the consent order, which are the manifestation of the agreement between the parties, are clear and unambiguous. First, the agreement at issue is between sophisticated parties, was subject to several rounds of negotiation, and is commercial in nature; therefore, a presumption that the language contained therein is definitive applies. Apart from this presumption, however, upon review of the agreement in its entirety and the language the parties chose to employ, the agreement clearly and unambiguously represents the intent of the parties to resolve all of the claims made by the plaintiff against the defendant Sparks.

First, the parties jointly moved the District Court for entry of this agreement, stating on the face of the motion that “[t]he parties have agreed to the entry of [the consent order].” The first line of the agreement between the parties incorporated the plaintiff’s original complaint into the scope of the consent order. The plain meaning of a complaint encompasses all of the claims and requests for relief contained therein. The plaintiff argues that the reason for including the term “[c]omplaint” in the language of the agreement was because General Statutes § 52-471 et seq. requires the filing of a verified complaint in order to bring a temporary injunction application; however, there is nothing in that set of statutes that provides for a requirement that the complaint be referred to in a settlement agreement between the parties within the context of a

temporary injunction application. Further, the parties are free to include or exclude any terms they please during negotiations, or opt not to voluntarily enter into a settlement agreement.

Second, the final paragraph of the agreement states that the “[o]rder [would] become judgment resolving the claims against [the defendant Sparks.]” When viewed in its entirety, the language of the agreement demonstrates that the intent of the parties was to resolve the claims against the defendant Sparks within the plaintiff’s original complaint and temporary injunction application, once the defendant Sparks had carried out the balance of the terms of the consent order. Because the plaintiff now advances a different interpretation of the language—that “the claims” does not include the plaintiff’s claims against the defendant Sparks for monetary damages—does not mean that the consent order is ambiguous. “The court will not torture words to impart ambiguity where ordinary meaning leaves no room for ambiguity.” (Internal quotation marks omitted.) *United Illuminating Co. v. Wisvest–Connecticut, LLC*, supra, 259 Conn. 670. There is no language in the agreement that suggests that the parties intended to exclude certain claims or forms of relief, and there is language in the agreement that states that the parties intended to resolve the claims against the defendant Sparks: including the claims, incorporated by explicit reference, found in the plaintiff’s original complaint against Sparks.

The intent of the parties is clear from the language of the consent order: to resolve the claims against the defendant Sparks contained within the plaintiff’s original complaint—which included the claims for monetary damages—and the application for temporary injunction. Therefore, the defendant Sparks has met its burden of demonstrating that there is no genuine issue of material fact as to whether the terms of the consent order resolved all of the claims against him and the plaintiff has failed to demonstrate a genuine issue of material fact as to

whether the language of the consent order is ambiguous or whether there was a meeting of the minds between the parties as to the meaning of the language of the agreement. Therefore, the defendant Sparks' motion for summary judgment is granted as to the second ground.

III Accord and Satisfaction

Finally, the defendant Sparks argues that summary judgment should enter in his favor because the agreement entered into by the parties was an accord, which he satisfied in exchange for the discharge of the plaintiff's claims against him. The plaintiff argues in response that there is a genuine issue of material fact as to whether there was a meeting of the minds as to the meaning of the terms of the agreement.

“An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the obligor's existing duty. . . . Accord and satisfaction is a method of discharging a claim whereby the parties agree to give and accept something other than that which is due in settlement of the claim and to perform the agreement. . . . Indeed, a validly executed accord and satisfaction precludes a party from pursuing any action involving the original, underlying claim.” (Internal quotation marks omitted.) *Assn. Resources, Inc. v. Wall*, 298 Conn. 145, 187, 2 A.3d 873 (2010).

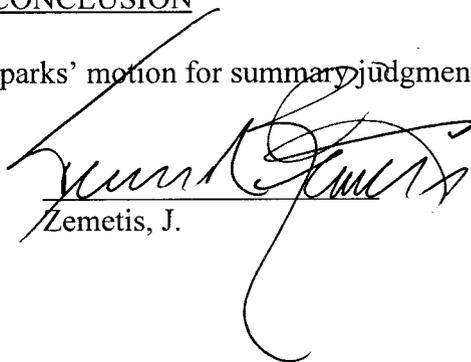
As discussed in Part B, the parties in the present case entered into an valid agreement, the terms of which were unambiguous and provided that the defendant Sparks would perform several tasks and, in exchange, the claims against him contained within the plaintiff's original complaint and the application for a preliminary injunction would be resolved. The defendant Sparks agreed give performance of the terms of the agreement and the plaintiff agreed to accept that

performance in exchange for giving up its claims—including those claims contained in its original complaint—against him. Just because the plaintiff now advances a different interpretation of the language—that “the claims” does not include the plaintiff’s claims against the defendant Sparks for monetary damages—does not mean that it is ambiguous as to what the plaintiff agreed to give up in exchange for the defendant Sparks’ performance. The scope of the accord included the claims in the plaintiff’s original complaint and application for a preliminary injunction; therefore, the claims contained in those pleadings are the ones the plaintiff agreed to give up in exchange for the defendant Sparks’ performance.

Further, there is no genuine issue of material fact concerning whether Sparks timely performed the terms of the agreement, thus, satisfying the accord and triggering the discharge of the plaintiff’s claims. Therefore, the defendant Sparks has met his burden of demonstrating that there is no genuine issue of material fact that the parties entered into a valid accord and that the defendant Sparks satisfied that accord in exchange for the discharge of the plaintiff’s claims against him. On the other hand, the plaintiff has failed to demonstrate that a genuine issue of material fact exists to the contrary. Therefore, the defendant Sparks’ motion for summary judgment is granted as to the third ground.

CONCLUSION

For these reasons, the defendant Sparks’ motion for summary judgment is granted.



Zemetis, J.