FLYNN, C. J., dissenting. I respectfully dissent from the majority opinion. This breach of contract case raises two key questions: (1) whether the plaintiffs were entitled to have the defendant construct the designed septic system for which they bargained and (2) whether the trial court properly found that there was no evidence that the septic system was not working properly.

I

Although the majority states that it is not persuaded by the plaintiffs' principal claim that the court improperly failed to assign dispositive significance to the pleadings, I am persuaded that the record supports the plaintiffs' claim and warrants reversal of the judgment and a new trial. Paragraph 3 (d) of the plaintiffs' complaint alleged that the defendant had agreed, via a contract, to "install [a] septic system according to plans prepared by Bascom Magnotta, Inc." (Bascom Magnotta), on the plaintiffs' property. In its answer to the plaintiffs' complaint, the defendant specifically admitted this allegation. Furthermore, the defendant made an admission in its counterclaim when it pleaded in paragraph 1 that "[t]he [contracted] work included . . . (d) [i]nstalling the septic system pursuant to the blueprint prepared by [Bascom Magnotta] . . . ."

The defendant's admission in the answer to the complaint and in its own counterclaim constituted binding judicial admissions that relieved the plaintiffs of any obligation to offer proof concerning this issue.[1] See *Rudder* v. *Mamanasco Lake Park Assn., Inc.*, 93 Conn. App. 759, 769, 890 A.2d 645 (2006). Clearly, without contest, there was a contract between the plaintiffs and the defendant that required the defendant to install a septic system for the plaintiffs in accordance with the plans prepared by Bascom Magnotta. One of the key questions before the court, then, was whether the defendant lived up to that agreement.

Despite the importance of this question, both to the plaintiffs' claim for breach of contract and to the defendant's counterclaim for breach of contract, the court never made a finding that the septic system conformed to the plan provided by Bascom Magnotta. Rather, one of the troubling findings of the court was that "[t]he June, 1999 contract between the parties provide[d] that [the defendant] will 'put sand as required by print.' That is the only reference to the [Bascom] Magnotta septic plan. No other language in that contract requires that [the defendant] grade to the elevations shown on the plan." Clearly, this finding does not take into account the pleadings of the parties and the judicial admissions of the defendant. The defendant had admitted that it was required to adhere to the Bascom Magnotta septic

plan both in its answer and in its counterclaim; this fact was not in dispute. Accordingly, in order to comply with the contract of the parties, the defendant was required to "grade to the elevations shown on the plan" if, in fact, elevations were shown on the plan.[2] In accordance with its judicial admission, it was required to adhere to all of the specifications of the Bascom Magnotta septic plan in order to fulfill its duties under the contract. I readily admit that there was some dispute over the exact contractual responsibilities of the defendant. The June, 1999 "contract" to which the court referred was a handwritten proposal that was not signed by either party, and both parties agreed that it did not set forth accurately their precise agreement.[3] There also existed an earlier typewritten proposal, again not signed by either party, which specifically stated that the septic work was to be performed in accordance with the Bascom Magnotta plan. Regardless of which document, if any, evinced the actual contract of the parties, however, both parties pleaded that their agreement required that the septic system be installed in accordance with the Bascom Magnotta plan. Additionally, George Hill, the owner of the defendant company, testified on direct examination that Ronald Borrelli submitted the Bascom Magnotta print to him and that he followed it.[4]

The defendant on appeal argues that the trial court acted well within its discretion in "finding that the defendant was not obligated to install the septic system according to the [Bascom Magnotta] plans."[5] The majority, although acknowledging that the defendant, in fact, was required to comply with the specifications on the Bascom Magnotta plan, concludes that the record demonstrates that the trial court found that the defendant had established its compliance. Having thoroughly reviewed the court's memorandum of decision, I am unable to agree with the majority's conclusion; nowhere did the court indicate that the defendant had complied with the Bascom Magnotta plan. Instead, the court appears to have found that plan to be rather insignificant, focusing on the fact that the sanitarian had approved the septic system. This fact, however, is not germane to the issue of whether the defendant installed the septic system in compliance with the plans developed by Bascom Magnotta, as agreed by the parties to be a necessary part of their contract. The contract did not simply call for an approved septic system; rather, it specifically called for a septic system that complied with the design plan prepared by Bascom Magnotta.

Our precedent is clear: Parties are entitled to get that for which they bargain.[6] This maxim is demonstrated nicely in *Strouth* v. *Pools By Murphy & Sons, Inc.*, 79 Conn. App. 55, 829 A.2d 102 (2003). In *Strouth*, the plaintiffs had sought to recover damages from the defendant swimming pool company for breach of contract because the pool company had begun to install a peanut shaped inground pool instead of the kidney

shaped pool required in the parties contract. Id., 60–61. In that case, we agreed with the trial court's conclusion that constructing a pool in a shape different from that which is contracted is a substantial breach of the contract. Id., 61. As we explained: "The issue . . . [was] whether the construction of a kidney shaped pool, when the contract called for a peanut shaped pool, constituted a material breach of the parties' contract so as to justify the plaintiffs in not performing their remaining duties under the contract. See *Bernstein* v. *Nemeyer*, 213 Conn. 665, 672–73, 570 A.2d 164 (1990) ('[i]t follows from an uncured material failure of performance that the other party to the contract is discharged from any further duty to render performances yet to be exchanged'); *John Arborio, Inc.* v. *Scapin*, 121 Conn. 492, 497, 186 A. 488 (1936); 2 Restatement (Second), Contracts § 237 (1981)." *Strouth* v. *Pools By Murphy & Sons, Inc.*, supra, 59. The question was not whether the pool would operate properly or pass inspection, but whether it comported with the contract specifications. Similarly, in the present case, the issue of whether the defendant installed the septic system in compliance with the contract, which specified that it was to be installed in accordance with Bascom Magnotta plan, was crucial to a determination of whether the contract was breached.[7] Separate from the issue of whether the septic system worked properly, a crucial factor in this breach of contract case centered on whether the septic system was installed in adherence to the Bascom Magnotta plan, a contractual requirement, relevant both to the complaint and to the counterclaim. Without a finding on this crucial issue, the judgment of the trial court cannot be affirmed. On this basis alone, I would reverse the judgment and remand the case for a new trial.

II

Additionally, however, I am troubled by the court's finding that "[t]he plaintiffs offered no evidence that the system is not operating properly." Although the court's fact-finding is given deference under the clearly erroneous standard, I cannot defer to a finding that there was "no evidence" when, in fact, there was evidence that the septic system was not working properly. The record before us contains many references to the "bleed off" of the septic waters and the expert opinion of Frank Magnotta, a civil engineer licensed by the state, that due to faulty installation, the septic system violated the state health code. Certainly, a septic system that violates the state health code cannot be said to be working properly. Although the trial court, if it noted Magnotta's evidence, might have found the testimony not credible, its finding that there was "no evidence," as opposed to no credible evidence, is not supported by the record. I would not affirm a judgment that was based on such a crucial factual finding that is contrary to the record. On this basis also, I would reverse the judgment and remand the case for a new trial.

Accordingly, I respectfully dissent.

[1] "[T]he admission of the truth of an allegation in a pleading is a judicial admission conclusive on the pleader. . . . A judicial admission dispenses with the production of evidence by the opposing party as to the fact admitted, and is conclusive upon the party making it. . . . *Solomon* v. *Connecticut Medical Examining Board*, 85 Conn. App. 854, 866, 859 A.2d 932 (2004), cert. denied, 273 Conn. 906, 868 A.2d 748 (2005); see also 71 C.J.S. 246, [Pleading] § 196 [2000] (admission in a plea or answer is binding on the party making it, and may be viewed as a conclusive or judicial admission). It is axiomatic that the parties are bound by their pleadings." (Internal quotation marks omitted.) *Rudder* v. *Mamanasco Lake Park Assn., Inc.*, 93 Conn. App. 759, 769, 890 A.2d 645 (2006).

[2] The plan included the requirement that grading be in accordance with the specific contours set forth on the plan. The plaintiffs' expert, Frank Magnotta, a civil engineer licensed by the state, testified that the grading performed by the defendants did not comply with the plan. Exhibit twenty-three, a certified grading as-built map, also demonstrates that grading was not in compliance with the plan. Magnotta also testified that the septic system "installation [did] not meet the requirements of the plan or the health code as far as operation and performance of that septic system."

[3] The court also acknowledged this in its memorandum of decision.

[4] We also note that the Middletown health department application for the permit to construct the septic system, which was in evidence, stated that the engineering plan of Magnotta was to be utilized. Robert Madore, Sr., a licensed septic installer, was listed as the installer on the permit application, and it was signed by Madore. Two additional signatures appear on the permit application also; one is not legible and the other bears the signature of George Hill. Hill also testified that he went to the town hall to obtain this permit and that he was listed as Madore's apprentice for that job.

[5] The defendant argues that not all judicial admissions are binding and that the court may exercise its discretion in disregarding the judicial admissions of a party where contrary evidence is presented. His argument, however, is unpersuasive.

[6] That is not to say that there must be absolute compliance with each and every minute term of a contract. Although at one time common law did require strict compliance with all terms of a contract, "[t]he general rule with respect to compliance with contract terms [now] . . . is not one of strict compliance, but substantial compliance." 15 S. Williston, Contracts (4th Ed. Lord 2000) § 44.52, pp. 217–18. "The doctrine of substantial performance shields contracting parties from the harsh effects of being held to the letter of their agreements. Pursuant to the doctrine of substantial performance, a technical breach of the terms of a contract is excused, not because compliance with the terms is objectively impossible, but because actual performance is so similar to the required performance that any breach that may have been committed is immaterial." Id., 221–22.

[7] This determination was crucial both to the plaintiffs' claim and to the defendant's counterclaim. Even if the court had determined that the plaintiffs had not proven that the defendant failed to adhere to the plan, the defendant, to be successful on its counterclaim, had to prove that it had complied with the plan.