NO. CV 09 4016818S	:	SUPERIOR COURT
SONO EQUITIES, LLC AND 1122 ASSOCIATES, LLC	:	JUDICIAL DISTRICT OF
v.	: :	STAMFORD/NORWALK AT STAMFORD
CITY OF NORWALK	:	AUGUST 22, 2011

MEMORANDUM OF DECISION ON
PLAINTIFFS' MOTION TO ENFORCE SETTLEMENT AGREEMENT (#113)

The plaintiffs, Sono Equities, LLC and 1122 Associates, LLC, owners of properties located in the city of Norwalk (city) at 50 Washington Street and 70 Dr. Martin Luther King Jr. Drive, appeal the assessor's valuation of their properties pursuant to General Statutes §§ 12-117a and 12-119, as of the revaluation date of October 1, 2008 and subsequent years.

The city's assessor, Michael Stewart, determined the following fair market values (FMV) as of October 1, 2008:

Property Address	Property Description	FMV
50 Washington St.	land & office building	$17,246,700
70 Dr. Martin Luther King Jr. Dr.	land (parking lot)	$ 909,700
	Total	**$18,156,400**

Following a judicial pretrial on March 30, 2011 that did not result in a settlement, the case was scheduled for trial. In the meantime, the city's attorney, Linda Guliuzza, and the plaintiffs' attorney, Elliott Pollack, exchanged a series of emails.

During the email communications between Attorneys Guliuzza and Pollack on April 27 and 28, 2011, the plaintiffs claim that the parties reached an agreement to settle the appeal of both properties at $15,100,000. It was the plaintiffs' understanding that the assessor would allocate the $15,100,000 settlement figure between the two properties.

However, the city claims that the settlement agreement of $15,100,000 resulted in an agreement of $15,100,000 for only the 50 Washington Street property. It is the city's position that the property at 70 Dr. Martin Luther King Jr. Drive would remain at its original valuation of $909,700. According to the city, the total value of both properties under their understanding of the settlement agreement would be $16,009,700.

With the different understanding of the parties as to what the settlement agreement encompassed, the city takes the position that there was no meeting of the minds and, therefore, no agreement to enforce. The city contends that for an agreement to be effective, it would need to include a provision for costs, fees and any refund of taxes, which was not recited in the April 27-28, 2011 series of emails.

In the court file, the first documentation of a settlement discussion of the tax appeal appears in an email from Attorney Guliuzza to Attorney Pollack dated April 27, 2011 at 4:35 p.m. This email recites, in relevant part, as follows:

"Please allow this letter to confirm our telephone conversation of today. As you will recall, I indicated that it was my belief that the parties were only $100,000.00 apart at

the pretrial before Judge Levine. At that time, my client had authorized settlement of the two parcels at $15,100,000. It was my understanding that your client was at $15,000,000. As we were unable to bridge the gap, we have an appraisal exchange date of May 16, 2011 and trial dates of October 19 and 20. As I indicated, my client asked that I call to make his position clear. We are at a point where we need to authorize our appraiser to incur additional costs to prepare a written appraisal. In light of those additional costs, my client has asked that I make it clear that the City's offer to settle at $15,100,000 is withdrawn."

Attorney Pollack responded to Attorney Guliuzza via email on April 28, 2011 at 12:12 p.m. as follows:

"In the unlikely event my client [is] willing to accept your proposal, may I assume that it is still on the table and that you will hold off ordering your appraisal until Tuesday - so that you do not incur further costs."

Five minutes later, Attorney Guliuzza replied by email to Attorney Pollack:

"Assuming your client will consent to a few extra days in the event Chris needs additional time to complete his report, yes."

Attorney Pollack responded by email to Attorney Guliuzza four minutes later, at 12:21 p.m.:

"Sure."

Attorney Pollack then emailed Attorney Guliuzza later that day at 3:32 p.m. as follows:

"Our client has accepted the City's settlement proposal in your 4/27 email; thanks for the opportunity to conclude this ligation amicably. [Elizabeth] Betsy Simonetti will prepare draft stipulations for your review early next week."

Later at 4:17 p.m., Attorney Guliuzza responded that her "office will draft the stipulations according to the Tax Assessor's instructions."

On May 11, 2011 at 9:44 a.m., Ms. Simonetti emailed Attorney Guliuzza (with a carbon copy (cc) to Attorney Pollack) the following message:

"Elliott asked me to inquire into the status of the draft. Please advise."

In reply, Attorney Guliuzza emailed Ms. Simonetti at 10:23 a.m. the following response:

"It's in my pile of files to go home for review tonight. It will be forwarded to Michael [Stewart] for his review in the next day or two, and once approved, I will forward it for your review. Thanks for your patience."

A few minutes later, Ms. Simonetti emailed Attorney Guliuzza (cc to Attorney Pollack) the following message:

"Given that there is a May 16, 2011 appraisal exchange date on the books, we will go ahead and report the case settled to the Tax Court."

On May 16, 2011 at 1:45 p.m., Ms. Simonetti emailed Attorney Guliuzza (cc to Attorney Pollack) the following message:

"Elliott asked me to check back with you on the draft settlement documents. Have they been approved by Mr. Stewart?"

On May 18, 2011 at 8:57 a.m., Ms. Simonetti emailed Attorney Guliuzza (cc to Attorney Pollack) the following message:

"Please let me know the status."

Later that morning, at 10:35 a.m., Attorney Pollack emailed Attorney Guliuzza (cc to Ms. Simonetti) the following message:

"Can you give me an eta for the settlement documents?"

On May 23, 2011 at 1:20 p.m., Ms. Simonetti emailed Attorney Guliuzza (cc to Attorney Pollack) the following message:

"Would it be possible for you to forward us the settlement documents today?"

One minute later, Attorney Guliuzza emailed Ms. Simonetti the following message:

"[T]o my knowledge Michael has not reviewed them yet."

Later that afternoon, at 2:49 p.m., Ms. Simonetti emailed Attorney Guliuzza the following message:

"Hopefully it will be possible [for] Mr. Stewart to review/approve the documents in the next day or two? Please let us know."

On May 27, 2011 at 12:37 p.m., Ms. Simonetti emailed Attorney Guliuzza (cc to Attorney Pollack) the following message:

"We'd like to request that the draft settlement documents for this matter be forwarded to us right after the Memorial Day holiday. Since we have a Court deadline of June 17, we do not want to run the matter down to the wire."

On May 31, 2011 at 2:47 p.m., Attorney Pollack emailed Attorney Guliuzza (cc to Ms. Simonetti) the following message:

"I am hard pressed to understand what has kept you and Mr. Stewart from completing the simple settlement stipulation in the Sono case. I think I am entitled to the documents - given that you asked to prepare them several weeks ago - by the close of business tomorrow. If they are not in hand, I will be compelled to file an appropriate motion with the court and to seek costs - that is, unless you would like me to prepare them."

Later that afternoon, at 4:39 p.m., Attorney Guliuzza emailed Attorney Pollack (cc to Michael Stewart), the following message:

"They have been prepared from some time and I am waiting for Michael to approve them. As I am certain you realize, he has many demands on his time. I will get

them to you the minute he has completed his review. We appreciate your patience."

At 5:49 p.m., Attorney Pollack emailed Attorney Guliuzza (cc to Mr. Stewart and Ms. Simonetti) the following message:

"Based on your representations that Mr. Stewart is too busy to sign off on your documents, we will wait until Friday to file with the court."

A series of emails, some only minutes apart, were sent on June 1, 2011:

At 3:05 p.m., Attorney Pollack emailed Attorney Guliuzza (cc to Ms. Simonetti) the following message: "FYI."

At 3:07 p.m., Attorney Guliuzza responded:

"What is your point?"

At 3:12 p.m., Attorney Pollack sent Attorney Guliuzza the following message:

"You agreed on behalf of the City to a settlement of the case at $15.1mm and I accepted your proposal as indicated in the email string below."

At 3:15 p.m., Attorney Guliuzza responded to Attorney Pollack (cc to Mr. Stewart) the following message:

"Yes. We agreed to reduce the office building to 15.1 with a withdrawal of the parking as discussed at pretrial. The stipulation has been drafted and delivered to Michael. Please call me if you have any further comments."

At 3:23 p.m., Attorney Pollack responded to Attorney Guliuzza (cc to Mr. Stewart

and Ms. Simonetti) the following message:

"Read your 4/27 email."

At 3:25 p.m., Attorney Guliuzza responded:

"Elliott, If you have a problem please call me to discuss."

At 4:48 p.m., Attorney Pollack responded to Attorney Guliuzza (cc to Ms. Simonetti) the following message:

"I do not have a problem with our agreement of 4/27-28."

On June 7, 2011, the plaintiffs filed a motion to enforce settlement agreement and for attorney's fees.

The issue here is whether the email exchanges between the parties resulted in an agreement to settle the pending appeal of the assessor's valuation of 50 Washington Street and 70 Dr. Martin Luther King Jr. Drive. When considering whether the email exchanges resulted in a contract between the parties, certain legal principles dealing with the formation of a contract must be set forth.

"The existence of a contract is a question of fact . . . . To form a valid and binding contract in Connecticut, there must be a mutual understanding of the terms that are definite and certain between the parties. In order for an enforceable contract to exist, the court must find that the parties' minds had truly met. . . . If there has been a misunderstanding between the parties, or a misapprehension by one or both so that their

minds have never met, no contract has been entered into by them and the court will not make for them a contract which they themselves did not make." (Citations omitted; internal quotation marks omitted.) Rosenblit v. Laschever, 115 Conn. App. 282, 288, 972 A.2d 736 (2009).

The difference between the parties' understanding of the settlement agreement can be summarized as follows:

According to the city's understanding of the settlement agreement, the property at 50 Washington Street would have a net reduction of $2,146,700, with no change to the valuation of the property at 70 Dr. Martin Luther King Jr. Drive.

According to the plaintiffs' understanding of the settlement agreement, both properties at 50 Washington Street and 70 Dr. Martin Luther King Jr. Drive would be reduced for a net reduction of $3,056,400.

With the plaintiffs relying on the language in the email of April 27, 2011 at 4:35 p.m., it is necessary to analyze just what was said and meant in this communication. This email recites that the city's offer to settle "the two parcels at $15,100,000" was withdrawn. The simple language supports the plaintiffs' contention that a package settlement of the two parcels was authorized by the assessor. However, recognizing that this tax appeal involved two separate parcels – land and an office building and a parking lot – it would require the assessor to allocate a certain amount to the land and office

building and to the parking lot.

At oral argument on the motion to enforce the settlement agreement, the plaintiffs recognized that the package settlement would require such an allocation, but argue that this allocation does not take away from the fact that there was an agreement to settle and that the assessor was free to make his own allocation.

As listed below, the draft stipulation for judgment that the assessor reviewed (see Exhibit C and ¶ 19 of Exhibit 1 (the assessor's affidavit dated June 29, 2011), both attached to the city's memorandum of law dated June 30, 2011), recites the assessor's original allocation of fair market value for each of the subject properties and only sets out revised allocations of fair market value for the 50 Washington Street property.

FMV under Stipulation (50 Washington St.)		Original FMV
Land	$ 766,800	$ 766,800
Yard Items	$ 2,000	$ 2,000
Buildings	$14,331,200	$16,477,900
Total	**$15,100,000**	**$17,246,700**

FMV under Stipulation (70 Dr. Martin Luther King Jr. Dr.)		Original FMV
Land	$882,800	$882,800
Yard Items	$ 26,900	$ 26,900
Buildings	$ 0	$ 0
Total	**$909,700**	**$909,700**
Grand Total:	**$16,009,700**	**$18,156,400**

From a review of the email exchanges between the parties, there were two

elements that were required to finalize the agreement of the parties to settle this tax appeal: (1) an agreement on the amount of reduction to the valuations of the subject properties being appealed and (2) the requirement that the assessor, Michael Stewart, review and approve the stipulation to settle.

As reflected in the emails, the 4/27/11 email referred to "$15,100,000" as the new fair market value for "the two parcels" being appealed. However, based on the assessor's understanding of what was discussed with Judge Levine during the pretrial, the 4/27/11 email, according to the assessor, did not reflect the assessor's concept, namely, that the $15,100,000 valuation only applied to the land and office building at 50 Washington Street. Judge Levine was not called upon to testify as to what was discussed at the pretrial to support the assessor's understanding of what were the terms of the settlement. However, it is clear from the exchange of emails as listed above, that both parties contemplated that the settlement of the tax appeal could not occur until the assessor reviewed and approved the terms of the settlement.

Although the plaintiffs take literally the language in Attorney Guliuzza's email of 4/27/11 that the settlement agreement was $15,100,000 for "the two parcels," it was clear that the 4/27/11 email was initiated as a withdrawal of the offer. The revival of the offer was made in subsequent emails. However, with the amount of the settlement fixed, the remaining items to be resolved were the allocations of value between the land and office

building at 50 Washington Street and the parking lot at 70 Dr. Martin Luther King Jr. Drive. The need to allocate value could only be done by the assessor, which in itself, highlights the importance of the second element of the agreement by having the assessor review and approve the terms of the settlement agreement.

The plaintiffs argue that the assessor's need to allocate the settlement figure of $15,100,000 between the two properties and to approve the agreement was immaterial to the validity of the contract. On the contrary, the assessor was not free to make arbitrary allocations of value to each property. In fact, he was obligated, pursuant to General Statutes § 12-63 (a)[1], to value the properties at 50 Washington Street and 70 Dr. Martin Luther King Jr. Drive at their fair market values, as of October 1, 2008.

In the present action, the attorneys' email exchange reflects that the parties intended that any agreement with the city: (1) fix the valuation issue of both the 50 Washington Street land and office building and the 70 Dr. Martin Luther King Jr. Drive parking lot and (2) obtain the approval of the city's assessor for any agreement. Although the attorneys appear to agree in the emails on the amount of $15,100,000 for "the two parcels", without the approval of the assessor setting the fair market value of each of the

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[1] General Statutes § 12-63 (a) provides, in relevant part, as follows: "The present true and actual value of all other property [which excludes land classified pursuant to §§ 12-107c, 12-107d, 12-107e, 12-107g] shall be deemed by all assessors and boards of assessment appeals to be the fair market value thereof and not its value at a forced or auction sale."

properties under appeal, there could be no meeting of the minds to create an enforceable contract.[2]

Upon the court's review of all the emails which the plaintiffs contend form the basis for an enforceable contract, the court is not persuaded that the parties had a meeting of the minds that would make the terms of the agreement definite and certain as contemplated in Rosenblit v. Laschever, supra.

Accordingly, the plaintiffs' motion to enforce settlement agreement is denied and the defendant's objection is sustained. No costs or attorney's fees are awarded to any party.

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Arnold W. Aronson
Judge Trial Referee

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[2] The importance of the assessor making a proper allocation between the two properties cannot be overlooked. An assessor who makes an allocation that does not relate to the fair market standard would run afoul of the equal protection laws by applying a different standard of valuation for similar properties. See Davis v. Westport, 61 Conn. App. 834, 767 A.2d 1237 (2001).