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February 26, 2021

Kari L. Olson, Esq.
Murtha Cullina, L.P.
280 Trumbull Street
Hartford, CT 06103

Re: East Brooklyn Fire District v. The IceBox/Matthew and Jennifer Nemeth

Dear Attorney Olson:

I think we have, unfortunately, reached a point with the above-referenced matter that unless the parties can reach agreement to keeping the easement open and non-interference by way of parking or otherwise, then we have to bring action on behalf of the fire department to protect their rights with respect to the right-of-way. I am advised that your clients continue to park a vehicle in the designated space that they have created in the front of their building which encroaches on the right-of-way. Unless they are prepared to cease-and-desist using that space to encroach upon the right-of-way, then we have no choice but to bring action to protect the property rights of the East Brooklyn Fire District.

I would also appreciate it if you could provide to us the most recent site plan that the Ice Box is operating under for purposes of the business because in my discussions with the attorneys for the Town, apparently the only site plan that the Town has goes back to the 1970s and there have been at least a couple of changes in use for this property that would have kicked off a requirement for an updated site plan.

This issue is important because the parking in front of the building has implications for the site lines for any vehicles coming out of the right-of-way.

Thank you in advance for your anticipated cooperation but I need to have some sense that we have a clear understanding of the use of the right-of-way or I must file litigation to protect the rights of the East Brooklyn Fire District.

Very truly yours,

William E. McCoy

WEM:slw

F:\work\East Brooklyn Fire Department\Ltr.to.Kari.Olsen.2021.02.26.docx



Christian >

May 20, 2020 at 11:30 AM

Hi Christian, are you in the office with everything going on?

Yes... in and out.

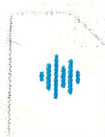
What's up?

We are in a neighbor dispute with the fire department (us, the hair dresser and the monogram lady) and we would like to see if we can consult with you about a letter to defuse the situation before stuff gets any worse

Jun 2, 2020 at 10:30 AM

Hi Christian, any chance you could call Matt? Our First Selectman is asking our attorney to write a letter to him today in order to issue us a zoning permit. Matt knows the specifics though. His number is 860-235-5087
Thank you!

Jun 26, 2020 at 11:03 AM



voicemail-1701.m4a
Audio Recording · 61 KB



iMessage





Christian Sarantopoulos
To You

Aug 17, 2020



Jenn and Matt:

I am in the process of putting your bill together along with a copy of your file.

In the meantime, I wanted to forward to you the response below I received from Attorney Cerrone which, as best I can tell, is written by someone from the fire district. I do not believe that Attorney Cerrone has anywhere close to the client control necessary to reach a settlement. I also believe that the fire district is determined to take unilateral steps going forward and I suggest you consider doing the same. Obviously, please discuss all of this with your new counsel.

Please have your new counsel notify Attorney Cerrone of a change in attorneys and that I am no longer representing you.

I wish you both of you the best with this situation going forward.

Christian

Christian G. Sarantopoulos, Esq.
Sarantopoulos & Sarantopoulos, LLC
143 School Street
Danielson, CT 06239
860-779-3919

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jenn@theiceboxct.com ✓

From: Kate Cerrone <kcerrone@nectlaw.com>

Sent: Saturday, August 15, 2020 1:55 PM

To: Christian Sarantopoulos <cgs@saralaw.net>

Subject: Fwd: Response to settlement offer

Below please see the response from the Fire District regarding the settlement offer.

Get [Outlook for iOS](#)

From: East Brooklyn <east_brooklyn@yahoo.com>

Sent: Saturday, August 15, 2020 1:45 PM

To: Kate Cerrone

Subject: Re: Response to settlement offer

Attorney Sarantopolous: I have had an opportunity to discuss The Ice Box's offer with the East Brooklyn Fire District. The global



Forward

jenn@theiceboxct.com

Sent: Saturday, August 15, 2020 1:45 PM

To: Kate Cerrone

Subject: Re: Response to settlement offer

Attorney Sarantopolous: I have had an opportunity to discuss The Ice Box's offer with the East Brooklyn Fire District. The global settlement that The Ice Box has offered is not acceptable to the District. The District is waiting for direction and approval from the town, before proceeding to paint markings or signage. The yellow curb which is bolted in over the property line into the Right of Way must be removed. Thank you.

Brooklyn Fire District

15 South Main St.

Brooklyn, CT. 06234

Subject: RE: East Brooklyn FD / The Ice Box
Date: Thursday, September 10, 2020 at 6:22:33 PM Eastern Daylight Time
From: Kari L. Olson
Attachments: image18631d.JPG

PLEASE NOTE: You were BCC'd

Thank you. The full email makes much more sense. As this agreement never materialized and was for settlement purposes only I do not think that it supports the notion that the Nemeths conceded any property rights to access the ROW where they deem appropriate. Anyway, I look forward to your reply.

Best-
kari

KARI L. OLSON | PARTNER

Direct: 860-240-6085 | Fax: 860-240-5885 | Mobile: 860-808-8267 | kolson@murthalaw.com

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From: Kate Cerrone [mailto:kcerrone@nectlaw.com]
Sent: Thursday, September 10, 2020 1:10 PM
To: Kari L. Olson
Subject: FW: East Brooklyn FD / The Ice Box
Importance: High

Please see below.

Kate Cerrone
Borner, Smith, Aleman, Herzog & Cerrone LLC
155 Providence Street

Putnam Connecticut 06260

860.928.2429 ext. 202

kcerrone@nectlaw.com

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From: Christian Sarantopoulos <cgs@saralaw.net>

Sent: Tuesday, July 28, 2020 10:33 AM

To: Kate Cerrone <kcerrone@nectlaw.com>

Subject: RE: East Brooklyn FD / The Ice Box

Kate:

Thank you for emailing me following your meeting with the fire department. I am following up to determine whether they have made a decision on the proposed settlement in its entirety.

As I have previously indicated to you, my client will not agree to piece-meal a solution. They will take no action nor agree to anything concerning the parking space until and unless there is an agreement on all outstanding issues that both parties feel need to be addressed. This approach is necessitated by the "dampened spirits" that my client shares along with yours, along with their desire to resolve all outstanding issues so that they are the fire department can co-exist with mutual respect for the other moving forward.

I want to point out that the painting of a fire lane will not accomplish anything that your client thinks it will. Fire lane restrictions cannot be created by fiat of the local fire marshal or selectmen. 100% of the CT caselaw clearly indicates that any restrictions that might flow from the establishment of a fire lane can only be created by regulation or ordinance of the local governing authority, in this case through adoption by Brooklyn P&Z. I have thoroughly read the Brooklyn land use regulations and they are silent as to any restrictions a fire lane might hypothetically create.

My clients are not willing to wait any further to resolve this matter. While not a completely seasonal business, the summertime is their busy season and they need to proceed forward with a traffic flow pattern that works for them with or without the cooperation of their neighbor. Further, if we cannot reach an agreement, I have instructed my clients that they are completely within their rights to direct traffic onto the easement right of way entering through their property, and they will proceed with that plan. Any attempt to block or harass this traffic pattern will result in a lawsuit being filed demanding money damages. Further, if there is no agreement, they will require the fire department to remove all parking spaces which are located on my client's property and prohibit any parking on that portion of the right of way and easement which is located on my client's property. Again, if this does not occur, a lawsuit will be brought seeking a court order. If there is no agreement, my client will also take steps to notify the WPCA of the generator and sign encroachment within the easement, which will result in significant cost to the department to relocate both. Finally, your client should understand that absent an agreement, my client does not agree with their contention that they and their customers cannot enter and exit the right of way in the one location nearest their buildings and they will be seeking a declaratory judgment supporting their position should litigation be necessary.

Obviously, my client's preference is to reach an agreement on all issues which impact the fire department's main concerns while allowing my client's customers to have proper access to parking and traffic flow, allow the fire station to continue to use the parking on my client's property, sets up a proper and profession way for the two sides to deal with issues going forward, and lets the issue of the generator and sign stay quiet.

As an aside, I cannot speak to what transpired from March until the point I was hired. I think there is plenty of fault on both sides to go around. I will again point out that the day after you called my client directly, my client called me and within a day of that communication I left the first of two phone messages with your staff, with no reply due to apparent communication issues within your office. I certainly hope the fire department understands this if part of their "dampened spirits" is their belief that this issue is being dragged out. I will not, at this time, comment concerning the number of police calls except to say that if the one or two members of the department behaved civilly as the vast majority have, then perhaps most of these calls would not have been needed to be made. Having said all of this, I think your client and mine would be best served if they both would focus on the future and not dwell on the past.

As discussed with you when we met, my client is willing to apply to have the parking space changed to a motorcycle space conditioned upon P&Z grandfathering the remaining spaces. The department, as an adjoining property owner, would support that application. The department can indicate whether they want a curb or fence installed delineating the property line. My clients are willing to extend the fence along the easement right of way to the corner of their property and have their customer enter the right of way within their property. They would agree that no parking should occur in the right of way by their customers. The fire department would remove the parking spaces they have created on their property within the right of way easement. My client would allow, by written agreement, the fire department to continue to use the rear parking spaces that are on my client's property which do not impact my client's business. Your client would install better and more prominent signage at the entrance to the right of way easement to warn vehicular and pedestrian traffic that there is a fire station; this could include by agreement no parking fire lane markings on the roadway. A mechanism would be set up within the agreement for both sides to communicate with the other if there are problems while leaving my client's customers alone. The agreement would have a mechanism for resolving disputes through mediation or arbitration wo that the courts and police are used only as a last resort. Again you and I have suggested that if arbitration or the courts are used, that the losing side pay attorney's fees and costs as a further deterrent. I may have forgotten something here by oversight, but I believe this summarizes the proposed framework you and I had discussed and endorsed as resolving 95% of each clients' concerns.

The only way to resolve these issues is for the parties to come to a reasonable agreement that benefits both sides but which neither side will be 100% happy. If you believe that a sit down with the two of us and our clients would be beneficial, please let me know.

I hope to hear from you shortly with some good news for both of our clients.

Christian

Christian G. Sarantopoulos, Esq.

Sarantopoulos & Sarantopoulos, LLC

143 School Street

Danielson, CT 06239

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KARI L. OLSON
860-240-6085 DIRECT TELEPHONE
860-240-6870 DIRECT FACSIMILE
KOLSON@MURTHALAW.COM

September 3, 2020

Kathleen M. Cerrone, Esq.
Borner Smith Aleman Herzog & Cerrone, LLC
155 Providence Street
Putnam, CT 06260

Re: The Ice Box

Dear Attorney Cerrone:

As you know, I represent Matthew and Jennifer Nemeth and their business, "The Ice Box," regarding their dispute with the East Brooklyn Fire Department over access to that certain right-of-way to which both parties have rights of access (the "ROW"). As you also know, the ROW is a deeded right of access that is appurtenant to The Ice Box property located at 17 South Main Street (the "Property"). The Property directly abuts the ROW for its entire length. Per our conversation, I write to outline the factual and legal basis for what should be a resolution to the issues that you identified as outstanding: 1) access to the ROW from the southerly portion of The Ice Box parking lot; and 2) the use of the first parking space at the northeast corner of the ROW.

A. The Nemeths Have An Unlimited Right to Use the ROW

Based upon the relevant deeds, the ROW provides the owners of the Property with the right to use the ROW "for all highway purposes." (Vol. 73; Page 371). Such broad and unrestricted language has been interpreted by the courts as including all things that a public highway may be used for, including the laying of utilities and parking. This principle is well-established.

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Such a grant is to be construed as broad enough to permit any use which is reasonably connected with the reasonable use of the land to which it is appurtenant. Peck v. Mackowsky, 85 Conn. 190, 194, 82 A. 199; Swensen v. Marino, 306 Mass. 582, 585, 29 N.E.2d 15; see Sweeney v. Landers, Frary & Clark, 80 Conn. 575, 579, 69 A. 566. The reasonable uses of the dominant tenement in connection with which the passway may be used are not limited to those to which the land was being put when the way was granted. Anzalone v. Metropolitan District Commission, 257 Mass. 32, 36, 153 N.E. 325; Parsons v. New York, N. H. & H. R. Co., 216 Mass. 269, 273, 103 N.E. 693; note, 130 A.L.R. 768, 770; 28 C.J.S., Easements, § 87, page 767.

Birdsey v. Kosienski, 140 Conn. 403, 413 (Conn. 1953). See also Hagist v. Washburn, 16 Conn. App. 83, 88 (1988) (broad easement language includes the right to park).

While I assure you, that the Nemeths have no intention of having their patrons park on the ROW, I mention the law merely to point out that they would have that right.

In addition, there is nothing in the relevant deeds that restricts where on the ROW the Nemeths are allowed to enter or exist. As pointed out above, the Property directly abuts the ROW and, therefore, the Nemeths have every right to access the ROW from the southern portion of The Ice Box parking area. Indeed, if you look at the Proposed Site Plan for Dairy Bar from 1978, the striping of the parking area reflects the plan that patrons enter the parking area directly behind the building and exit through the southern end of the parking area, i.e. that the parking area be "one way" in and out.

It is my understanding that you interpreted the Nemeths' deed as restricting access to the ROW to the northern end of the ROW. This is belied by the express language of the deed and the 1978 plan upon which the ROW was based. The deed provides for the right to use the ROW as set forth in the easement documents and then also confirms that the northern portion of the ROW may still be used by the owner of the Property for access to its existing gas station abutting South Main. In other words, that language does not limit the access use of the ROW, it actually expands it to include the right of the Nemeths' predecessor to allow gas station patrons to cross over the northern end to access the gas pumps that used to sit directly in front of the building on the Property. This also is reflected on the 1978 plan. The fact that both provisions begin with "Together with" further supports this as the only reasonable interpretation of the deed. The Nemeths are entitled to use the ROW both for its full length north to south and may cross it at the northern end to access the front of the buildings on the Property.

Despite no legal authority to do so, your client has constructed a fence along the boundary of the ROW blocking the Nemeths' right of access thereto from its parking area. Your client's prompt removal of the fence will resolve this issue.

B. The Nemeths Have the Right to Use the Parking Space at Issue

It is my understanding that your client has demanded that the Nemeths remove the parking space curbing for the first parking space directly in front of their building. This space, which has existed for more than 40 years as striped, apparently straddles the survey line for the ROW by about a foot.

I am aware of at least two witnesses with personal knowledge that this parking space has existed, as striped, for well over 15 years prior to the Fire Department's acquisition of its property. We certainly can bring a quiet title action for adverse possession and/or prescriptive rights, but the hope is that the parties can reach an amicable resolution of this issue as well, as the Fire Department has no current right to insist on the removal of the parking space – both because it predates the Fire Department's acquisition of their property and because the Nemeths have the right to park in the ROW. In an effort to settle the matter, the Nemeths have suggested the possibility of limiting this space to smaller vehicles, like a motorcycle or moped, or perhaps even bicycles.

C. Other Issues to Address

In addition to the forgoing, there have been several instances where members of the Fire Department have interfered with the conduct of the Nemeths' business. One example was the shouting at patrons for parking on South Main Street. Please note that I am not aware of any legal authority for the Fire Department to self-proclaim a fire lane or "no parking" zone on the ROW, much less on Town property. If I have missed something, please provide me the appropriate citations to same.

Similar disruptions, including the antagonizing of patrons, and other bad behaviors have been fully documented and, as I explained over the telephone, could subject members of the Fire Department to personal liability.

In the end, the Nemeths do not want to have to sue. They would much rather work with the Fire Department to reach a mutually satisfactory agreement that takes into account their respective property rights so that both parties can co-exist in a more harmonious fashion.

Kathleen M. Cerrone, Esq.
Borner Smith Aleman Herzog & Cerrone, LLC
September 3, 2020
Page 4

I look forward to your prompt reply.

Very truly yours,

A handwritten signature in cursive script that reads "Kari L. Olson". The signature is written in dark ink and is positioned above the printed name.

Kari L. Olson

Fax 860-779-5091
email: cgs@saralaw.net

From: Kate Cerrone <kcerrone@nectlaw.com>
Sent: Wednesday, July 22, 2020 4:04 PM
To: Christian Sarantopoulos <cgs@saralaw.net>
Subject: East Brooklyn FD / The Ice Box
Importance: High

Good afternoon Christian, I had a chance to discuss the status with my clients. Although they have not accepted the global offer of settlement, they are considering the issues that have been raised. Out of my discussions with them today, they wished that I only communicate as to the parking spot. At this time, they take the position that the foot and one-half of the parking spot that is on the Right of Way needs to be removed. The Fire Marshal has directed them to make the Right of Way a Fire Lane and to mark it as such. They take no position as to whether there can be motorcycle parking there and they leave that up to the town. That was the one issue they wished me to communicate to you at this time. As to the other issues which comprised the proposed global settlement, they would like some time to discuss those items before they communicate on those.

They also wanted me to communicate that they feel this could have been resolved in March when they first reached out, and in June when they hired me to reach out. Due to the amount of time that has gone by and due to the number of times the police have been called, the members of the fire department have had their spirits dampened about the situation. Those are the exact words they wished me to say.

I will be back in touch if I get further direction from them.

Kate Cerrone

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Subject: RE: The Ice Box
Date: Thursday, September 3, 2020 at 2:35:31 PM Eastern Daylight Time
From: Kari L. Olson
Attachments: image7a44db.JPG, Letter to Attorney Cerrone.pdf

PLEASE NOTE: You were BCC'd

Dear Kate: Attached is the letter we discussed on the telephone. Let me know if anything is unclear. We look forward to a very prompt resolution.

Best-
Kari

KARI L. OLSON | PARTNER

Direct: 860-240-6085 | Fax: 860-240-5885 | Mobile: 860-808-8267 | kolson@murthalaw.com

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From: Kate Cerrone [mailto:kcerrone@nectlaw.com]
Sent: Tuesday, September 01, 2020 10:59 AM
To: Kari L. Olson
Subject: The Ice Box

Good morning Kari, just following up from our phone conversation yesterday with an email so you can reply with the issues we discussed.

Thank you, I look forward to hearing from you.

Kate Cerrone
Borner, Smith, Aleman, Herzog & Cerrone LLC