UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and CESAR RUIZ,

Plaintiffs,

-against-

VILLAGE OF PORT CHESTER,

Defendant.

JUDGMENT

06 Civ. 15173 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

The Court in this matter having issued a preliminary injunction on March 2, 2007, entered on March 5, 2007; and the Court having issued a Decision and Order after a trial on liability on January 17, 2008; and the parties in this action having agreed to a Consent Decree entered by the Court on December 22, 2009; and the Court having issued a consolidated opinion entered on April 1, 2010; and the matter of attorneys' fees and costs having been resolved by Stipulation and Order entered December 15, 2010;

It is hereby ORDERED, ADJUDGED, and DECREED that Judgment is entered pursuant to the terms of the Consent Decree dated December 21, 2009.

Dated: New York, New York
April 21, 2011

SO ORDERED.

Paul G. Gardephe
United States District Judge

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA and CESAR RUIZ,

Plaintiffs,

-against-

VILLAGE OF PORT CHESTER,

Defendant.

ORDER

06 Civ. 15173 (PGG)

PAUL G. GARDEPHE, U.S.D.J.:

In this long-running case, plaintiffs challenged the Village of Port Chester's at-large election system for the election of Village Trustees.[1] Plaintiffs claimed that the Village's at-large election system had the effect of discriminating against Hispanics. Pursuant to a consent decree entered into on December 21, 2009 (the "Consent Decree"), the Village agreed to an injunction prohibiting it from employing an at-large election system and the implementation of a cumulative voting system. (See Consent Decree ¶ 3) The Village also agreed to implement a Voter Education Program to assist voters in understanding the new cumulative voting system. (Id. at ¶ 6) The Consent Decree provides that "[j]udgment shall not be entered in this case prior to August 15, 2010." (Id. at ¶ 11) The delay in entering judgment reflected plaintiffs' desire to determine – in light of a June 15, 2010 election – whether the new cumulative voting system was adequate to resolve what plaintiffs believed were the Village's Voting Rights Act violations. (Id. at ¶ 10; March 9, 2011 Kennedy Ltr.) Because plaintiffs did not move to vacate the Consent

[1] This case was assigned to Judge Robinson from its inception in 2006 until Judge Robinson's resignation from the bench in August 2010. The case was reassigned to this Court on November 15, 2010.

Decree within sixty days of the June 15, 2010 Village Board of Trustees election, the terms of the Consent Decree will remain in effect until June 22, 2016. (Consent Decree ¶ 10)

The December 2009 consent decree followed a series of rulings from Judge Robinson. On March 2, 2007, Judge Robinson entered a preliminary injunction enjoining use of the at-large system. (Docket No. 58) On January 17, 2008, Judge Robinson entered a permanent injunction against the Village's at-large election system. (Docket No. 85) Briefing and a hearing as to an appropriate remedy followed, and on November 6, 2009, Judge Robinson ruled that a cumulative voting remedy was appropriate. (Docket No. 115)

After entry of the Consent Decree in December 2009, Judge Robinson issued an April 1, 2010 Opinion and Order. (Docket No. 124) It is undisputed that the April 1, 2010 Opinion and Order merely reiterates Judge Robinson's earlier decisions and contains no new findings, determinations, or remedies. See April 14, 2011 Tr. 3, 14 ("Mr. Piscionere: . . . I would agree with your Honor that the April 1, 2010 order more or less merely – in not a condensed fashion, but in one document outlined – contained all the decisions of the case. . . . [I]t was a compilation of all the prior decisions."); March 9, 2011 Kennedy Ltr. at 3) The April 1, 2010 Opinion and Order does provide, however, that it is a "final order." (April 1, 2010 Opinion and Order (Docket No. 124) at 1) No appeal was taken at that time.

The parties now request that judgment be entered. A dispute has emerged as to the form of that judgment, however. The Village has submitted a proposed judgment (1) reciting that "the parties having reserved whatever appellate rights they have"; and (2) indicating that judgment is entered pursuant not only to the terms of the Consent Decree but also pursuant to Judge Robinson's April 1, 2010 Opinion and Order. (March 3, 2011 Piscionere Ltr.) Plaintiffs

argue, however, that no appellate rights were reserved in the Consent Decree and that judgment should be entered pursuant to that decree.

After receiving the competing proposed judgments, the Court heard argument concerning this issue. During the April 14, 2011 hearing, defense counsel stated that "the village intends to appeal . . . [Judge Robinson's] liability finding." (April 14, 2011 Tr. 4) Counsel also argued that the Village had preserved its appellate rights. This Court concludes that the Village preserved no appellate rights in the Consent Decree.

The law is clear that matters within the scope of a consent decree or consent judgment can generally not be appealed. See LaForest v. Honeywell Int'l Inc., 569 F.3d 69, 73 (2d Cir. 2009) ("'Appeal from a consent judgment is generally unavailable on the ground that the parties are deemed to have waived any objections to matters within the scope of the judgment.'" (quoting New York ex rel. Vacco v. Operation Rescue Nat'l, 80 F.3d 64, 69 (2d Cir.1996))). Furthermore, "'[f]or a party to consent to a judgment and still preserve his right to appeal, he must reserve that right unequivocally, as it will not be presumed.'" (Id. (quoting Coughlin v. Regan, 768 F.2d 468, 470 (1st Cir.1985)). Here, the Consent Decree reserves the right of the United States and Plaintiff-Intervenor to "vacate the Decree upon a showing that the cumulative voting program has failed to cure the violation of Section 2 of the Voting Rights Act" within 60 days of the first cumulative-voting election. (Consent Decree ¶ 10) Plaintiff-Intervenor also reserved the right "to file a motion for an award of attorneys' fees and costs if the parties are unable to resolve the matter." (Id. ¶ 15) The Consent Decree contains no reservation of rights on the part of the Village.

The Village claims, however, that it reserved appellate rights at a December 17, 2009 court conference that preceded entry of the December 21, 2009 consent decree. At that

conference Village counsel said, "all three parties have agreed that nothing that is contained in this consent decree is designed or intended to limit anybody's appellate rights, whatever they may be. . . . [A]ll parties have agreed to reserve whatever appellate rights we may have." (Dec. 17, 2009 Tr. 27-28) In the Consent Decree that the parties later entered into, however, no party reserved appellate rights. Moreover, the Consent Decree contains an integration clause that bars resort to any earlier alleged agreements: "This Decree represents the entire agreement between the parties. Any oral representations or agreements concerning the subject matter of this Decree are of no force or effect." (Consent Decree ¶ 18) The Consent Decree further states that it reflects "resolution of this matter." (Id. at 2) In sum, nothing in the Consent Decree suggests that any party reserved its right to appeal any aspect of this case.

The Consent Decree is a contract, and it is a fundamental rule of contract interpretation that where a "'contract is clear and unambiguous on its face, the intent of the parties must be gleaned from within the four corners of the instrument, and not from extrinsic evidence.'" RJE Corp. v. Northville Indus. Corp., 329 F.3d 310, 314 (2d Cir. 2003) (quoting De Luca v. De Luca, 300 A.D.2d 342 (2d Dept. 2002)). Here, the Decree specifies that oral representations are "of no force or effect." Accordingly the Village did not reserve any appellate rights in the Consent Decree, and the Court will not include language in its judgment suggesting that appellate rights were reserved.

The Court's judgment will likewise not indicate that judgment is being entered pursuant to Judge Robinson's April 1, 2010 Opinion and Order. The Village concedes that the April 1, 2010 decision – issued by Judge Robinson long after the Consent Decree had been entered into – merely reiterates earlier decisions and does not grant any relief beyond what the Consent Decree itself provides. (April 14, 2011 Tr. at 13-14 (The Court: "Do you contend that

the April 2010 decision granted plaintiff[s] some relief that was not already provided for in the consent decree? Mr. Piscionere: No, it did not, Judge. No, it did not.”))

The Village argues, however, that it wishes to appeal Judge Robinson's liability finding, and not the remedy it agreed to in the Consent Decree. See April 14, 2001 Tr. at 4 (“I do not believe that the Village has the right to appeal the terms of the consent decree itself, nor the imposition of the remedy, which was the remedy that the Village had offered to the Court by way of remedying the Section 2 violation. But [we] still have the underlying finding of liability, your Honor, and that is what the Village intends to appeal.”))

The Second Circuit has rejected past efforts to draw a distinction – for purposes of appeal – between consent judgments and liability findings that may have provoked a party's decision to enter into a consent judgment. In LaForest v. Honeywell Int'l Inc., for example, the defendants entered into a settlement agreement that resolved all substantive claims but that “explicitly preserved the issue of [the defendant's] liability for an attorney's fee and costs [award].” LaForest, 569 F.3d at 72. “After entry of the consent judgment, the plaintiffs moved for an attorney's fee award pursuant to ERISA. While that motion was pending, [the defendant] appealed from the district court's . . . [earlier] ERISA liability ruling.” Id. at 73. The defendant argued that the court “should review the issue of . . . liability ‘because it could serve as a predicate for an award of fees and costs.’” Id. The Second Circuit rejected this argument, finding that “‘all disputes bearing on the merits of the underlying action were mooted by the Stipulated Order of Dismissal.’” Id. at 74 (quoting Doyle v. Kamenkowitz, 114 F.3d 371, 374-75 (2d Cir. 1997)). Here, the issue of liability was similarly mooted by the Consent Decree.

Accordingly, for the reasons stated above, the form of judgment adopted by this Court will not refer to any reservation of appellate rights, and judgment will be entered pursuant to the December 21, 2009 Consent Decree.

Dated: New York, New York
April 21, 2011

SO ORDERED.

Paul G. Gardephe
United States District Judge