Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-426

MAY TERM, 2007

Paul Bidgood	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Town of Cavendish	}	
	}	DOCKET NO. 85-2-06 Wrcv
		Trial Judge: William D. Cohen

In the above-entitled cause, the Clerk will enter:

Appellant Paul Bidgood appeals pro se from a superior court order affirming the Vermont Transportation Board's dismissal of his petition challenging the Town of Cavendish's reclassification of a Town highway. Appellant contends the court improperly: (1) perpetuated errors committed by the trial court and this Court in prior litigation between the parties; and (2) affirmed the Board's sua sponte dismissal. We affirm.

This is the second appeal to come before the Court in this matter. Most of the pertinent facts are set forth in Bidgood v. Town of Cavendish, 2005 VT 64, ¶¶ 2-4 (mem.). In brief, the dispute centers on appellant's efforts to obtain winter access to his property, which fronts on a Town highway known as the Old Bailey Road. In the earlier litigation, appellant filed two actions challenging the Town's reclassification of the road from class 3 to class 4, one an appeal from the road commissioner's reclassification, and the other a civil suit seeking declaratory relief and tort damages against the Towns of Chester and Cavendish, a town manager, and the intervenor Agency of Natural Resources.[1] The actions were consolidated for trial.

During trial, the parties reached a comprehensive settlement of all contested matters. Appellant was represented by counsel during the negotiations and signed the stipulated settlement, which the court incorporated into an order of dismissal in May 2003. The order dismissed the case with prejudice "with leave to reopen within ninety (90) days" if certain conditions were not satisfied. Id. ¶ 3. In late August 2003, after the ninety-day deadline had passed, appellant moved pro se to rescind the settlement agreement, and subsequently moved to resume trial. Treating the motion to

[1] The Agency of Natural Resources, Department of Forests, Parks and Recreation became involved in the actions because a state-forest highway that is closed in winter connects with the road in question.

rescind as a motion for relief under Vermont Rule of Civil Procedure 60(b), the court found no basis for relief and denied the motions. See Johnston v. Wilkins, 2003 VT 56, ¶ 8, 175 Vt. 567 (mem.) (stipulated settlement incorporated into a final judgment can be disturbed only pursuant to the procedures and criteria set forth under V.R.C.P. 60(b)).

On appeal to this Court, appellant claimed that the trial court erred in denying his motions because the court in the underlying action lacked subject matter jurisdiction to accept the settlement and dismiss the case. We held, however, that most of appellant's claims amounted to a collateral attack on the judgment of dismissal which were barred by the doctrine of res judicata. Bidgood, 2005 VT 64, ¶¶ 6-7; see Johnston, 2003 VT 56, ¶ 8 (stipulated settlement incorporated into a final judgment dismissing the case "has the preclusive effect of a final judgment"). We also specifically rejected appellant's claim that the court lacked jurisdiction because it had failed to follow certain procedures relating to road reclassifications. Bidgood, 2005 VT 64, ¶ 10. As to the request for relief, we noted that appellant's motion to rescind the agreement was not filed within the ninety-day deadline, and that the settlement and judgment therefore remained binding. Id. ¶ 8. We further found that appellant had adduced no evidence that the agreement was the result of duress or unequal bargaining strength, recalling that appellant was represented by counsel during trial and the settlement negotiations. Accordingly, we held that "the settlement agreement controls" and that the trial court properly denied the motion for relief from judgment. Id. ¶ 10.

While appellant was pursuing the claims which resulted in the first appeal, he was also seeking to overturn one of the specific contingencies set forth in the settlement agreement itself. The agreement provided that, in return for appellant's dismissal of the complaints, the Town would warn a reclassification hearing to convert the road in question from class 4 (which appellant acknowledged to be its current status) to a three-season class 3 highway.[2] The agreement expressly stated that the Town could not "guarantee the results of such hearing," and made the stipulation "contingent on a final decision (including any decision on appeal) reclassifying [the road] to a three-season Class 3 road."

The Town selectboard subsequently held the required hearing and voted to reclassify the road as contemplated in the agreement. Appellant opposed the reclassification, however, and appealed the selectboard's decision to the Vermont Transportation Board. The Town moved to dismiss, but the Board stayed any decision pending this Court's resolution of the first appeal. Following our decision, the Town renewed its motion, which the State joined. The Board then voted to dismiss the appeal based upon this Court's decision "affirming the . . . agreement reached by all parties." The superior court affirmed the Board's order, ruling that most of appellant's claims were reargurments of issues resolved in the earlier appeal, and were therefore barred by the doctrine of res judicata. The court further ruled that appellant was contractually barred from challenging the Town's reclassification of the road from class 4 to three-season class 3, as called for in the stipulated settlement, on the basis that he was prohibited by the implied covenant of good faith and fair dealing from acting to undermine the settlement agreement. This appeal followed.

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[2] Although towns must generally maintain class 1, 2, and 3 highways "in good and sufficient repair during all seasons of the year," they have the discretion to determine whether class 2 or 3 highways "should be plowed and made negotiable during the winter." 19 V.S.A. § 310(a); see also 19 V.S.A. § 302(a)(3)(B) (same).

Appellant's claims consist largely of a recitation, as he puts it, of "errors committed by the trial court and by the Supreme Court in the prior litigation." The court here correctly ruled, however, that the elements of res judicata were satisfied and that appellant was therefore barred from relitigating claims that were, or properly could have been, litigated in the earlier proceedings. See Kellner v. Kellner, 2004 VT 1, ¶ 8, 176 Vt. 571 (mem.) (res judicata bars litigation of a claim or defense that was, or could have been, raised if there exists a final judgment in a former litigation in which the parties, subject matter, and causes of action are identical or substantially identical).

Appellant also contends the court erred in concluding that he was contractually barred from challenging the reclassification provided for in the settlement agreement. The trial court was correct in observing, however, that Vermont law implies in every agreement an implied covenant of good faith and fair dealing to refrain from any actions that would undermine either party's right to receive the benefits of the agreement. Downtown Barre Dev. v. C & S Wholesale Grocers, Inc. 2004 VT 47, ¶ 18, 177 Vt. 70. This principle has been widely recognized as barring a party from undertaking any action that would interfere with the implementation of a settlement agreement. See, e.g., Kaiser v. Royal Ins. Co. of Am., 89 P.3d 740, 742 (Alaska 2004); Envtl. Control, Inc. v. City of Santa Fe, 38 P.3d 891, 898 (N.M. Ct. App. 2001); Ochal v. Television Tech. Corp., 809 N.Y.S.2d 604, 605 (N.Y. App. Div. 2006). We thus agree with the trial court that, having agreed to dismiss his actions in return for the Town's undertaking to reclassify the road from class 4 to three-season class 3, appellant was barred from interfering with implementation of the settlement by opposing the reclassification to which he had expressly agreed. Although appellant notes that the agreement was expressly "contingent on a final decision (including any appeal) reclassifying the road," we do not construe this as authorizing appellant to challenge on appeal the reclassification to which he had assented. Nor, as appellant claims, did the agreement improperly bind the Town selectboard, as it expressly recognized that the Town could not "guarantee" the result of the selectboard hearing, and the agreement was binding only if the selectboard enacted the reclassification in question. Accordingly, we find no basis to disturb the judgment.

Affirmed.

BY THE COURT:

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Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice