

DOCKET NO. KNL CV 19-6041370

SUPERIOR COURT

CHRISTOPHER E. MARCHESI TRUSTEE  
OF THE RHONDA M. MARCHESI REVOCABLE  
TRUST DATED NOVEMBER 17, 2017

J.D. OF NEW LONDON

V.  
TOWN OF LYME

AT NEW LONDON  
NOVEMBER 25, 2019

MEMORANDUM OF DECISION

RE: MOTION TO CITE IN (#105)

The plaintiffs, Christopher Marchesi, as trustee of the Rhonda Marchesi Revocable Trust and individually, brought this action seeking declaratory judgment. The plaintiffs' complaint is set forth in two counts: count one is of common law abandonment and count two is of equitable acquiescence. The plaintiffs allege that, beyond the limits of its unimproved section, Brockway Ferry Road has been abandoned as a municipal highway by the defendant, the Town of Lyme, and that all rights of the public therein have ceased to exist. The declaratory action is limited to the westerly end of Brockway Ferry Road in which the lost or uncertain bounds thereof were previously defined by the Superior Court. The western end is unimproved and runs to the Connecticut River.

The defendant's motion to cite in seeks a court order to direct the plaintiffs to cite in additional party-defendants, including all property owners owning real property abutting Brockway Ferry Road and the State of Connecticut, care of the Department of Energy and Environmental Protection, and to further direct the plaintiffs to provide public notice of the

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pendency of this action in order to allow any members of the public to appear in this action. The motion and the plaintiffs' objection thereto were heard by the court at short calendar on October 15, 2019.

The subject portion of Brockway Ferry Road was previously at issue in an action pursuant to General Statutes § 13a-39. In the prior action, the trial court determined the boundaries of the lost or uncertain bounds of Brockway Ferry Road extended beyond the unimproved section through and across the plaintiff's property into and below the mean high tide line of the Connecticut River, which was affirmed in *Marchesi v. Board of Selectmen of the Town of Lyme*, 328 Conn. 615, 181 A.3d 531 (2018). As such, the western end of Brockway Ferry Road is a portion of a town highway. The plaintiffs claim that this portion ceases to exist as a public highway based upon abandonment or equitable acquiescence.

#### DISCUSSION

Practice Book § 9-18 provides in relevant part that “the judicial authority may determine the controversy as between the parties before it, if it can do so without prejudice to the rights of others, but, if a complete determination cannot be had without the presence of other parties, the judicial authority may direct they be brought in.” See also General Statutes § 52-107.<sup>1</sup> A necessary party is indispensable to a complete determination of the controversy. See Practice Book § 9-18; W. Horton et al., 1 Connecticut Practice Series: Connecticut Superior Court Civil Rules (2018-2019 Ed.) § 9-18. In *Biro v. Hill*, 214 Conn 1, 6, 570 A.2d 182 (1990), the Court stated “[i]n short, a party is necessary if its presence is absolutely required in order to assure a fair and equitable trial.” (Internal quotation marks omitted.)

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<sup>1</sup> The defendant's reliance on General Statutes § 52-102 is misplaced, as this provision concerns only parties that the plaintiff can join as defendants in the original complaint. See also Practice Book § 9-6.

A. Owners of property abutting Brockway Ferry Road

Connecticut courts have offered some guidance as to when a party may be necessary in an action. “Necessary parties . . . are those [p]ersons having an interest in the controversy, and who ought to be made parties, in order that the court may act on that rule which requires it to decide on, and finally determine the entire controversy, and do complete justice, by adjusting all the rights involved in it. . . . [B]ut if their interests are separable from those of the parties before the court, so that the court can proceed to a decree, and do complete and final justice, without affecting other persons not before the court, the latter are not indispensable parties.” (Internal quotation marks omitted.) *In re Devon B.*, 264 Conn. 572, 579-80, 825 A.2d 127 (2003). “[P]arties are indispensable when they not only have an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience.” (Internal quotation marks omitted.) *Fong v. Planning & Zoning Board of Appeals*, 212 Conn. 628, 632, 563 A.2d 293 (1989).

In the specific context of land and real estate disputes, “a person whose interests in real estate would be affected by the relief sought [is] an indispensable party.” *Goodman v. Bank of Boston Connecticut*, 27 Conn. App. 333, 341, 606 A.2d 994 (1992). Conversely, a party is not necessary when they have “no special interest in [the] particular parcel of land” at issue in the case. *Bender v. Bender*, 292 Conn. 696, 724, 975 A.2d 636 (2009). Necessity does not automatically extend to nearby property owners merely by virtue of their status as abutting owners; the Supreme Court has noted that, in the context of zoning board appeals, the “interests [of abutters] may be regarded as adequately represented by the [zoning] board itself . . .” *Fong v. Planning & Zoning Board of Appeals*, *supra*, 212 Conn. 633.

The defendant claims that the neighbors on Brockway Ferry Road hold an easement of travel over public highways. (Def. Memo. of Law, p. 1-2).<sup>2</sup> The abutting owners of Brockway Ferry Road have the same interest in the easement over the public highway as other members of the public, as discussed in part D of this opinion. All of the abutting property owners are the owners of real property located easterly and northeasterly of the plaintiff's property, with the exception of James A. Behrendt, who owns property located to the west of the plaintiff's property. In other words, they do not traverse the subject portion of the highway to access their properties, nor do their properties abut the subject portion of the highway at issue. In sum, there is no claim that the owners of property abutting Brockway Ferry Road specifically abut the section of Brockway Ferry Road beyond the limits of the unimproved section, which is at issue in this case.

While the owners of property abutting Brockway Ferry Road *may* have an interest, the court does not conclude that they are necessary parties to an adjudication of this matter, excepting Behrendt. See *Kerrigan v. Commissioner of Public Health*, 279 Conn. 447, 904 A.2d 137 (2006).<sup>3</sup> This does not mean that these persons may not move to be joined as parties.<sup>4</sup> “The decision whether to grant a motion for the addition of a party to pending legal proceedings rests generally in the sound discretion of the trial court.” (Internal quotation marks omitted.) *In re Devon B.*, *supra*, 264 Conn. 580; see also Practice Book § 9-19 (stating in relevant part that

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<sup>2</sup> The neighbors refers to those individuals listed in defendant's motion to cite, Schedule A, but excluding James Behrendt, who is discussed in part B.

<sup>3</sup> The defendant relies on the prior action, in which the several adjoining property owners of Brockway Ferry Road were made additional defendants by the plaintiff. *Marchesi v. Board of Selectmen of the Town of Lyme*, *supra*, 328 Conn. 618 n.3. The prior action was a statutory action pursuant to § 13a-39 involving a determination of the bounds of the highway by the town selectmen. Neither the defendant's reference to the requirements of General Statutes § 13a-49 nor to the prior proceedings are persuasive authority for the determination of necessary parties in the present action.

<sup>4</sup> See General Statutes § 52-108; Practice Book § 9-6.

“[n]ew parties may be added and summoned in . . . by order of the judicial authority, at any stage of the cause as it deems the interests of justice require”); *Horton v. Meskill*, 187 Conn. 187, 192, 445 A.2d 579 (1982) (stating that “the admission of new parties is within the broad discretion of the trial court” [internal quotation marks omitted]).<sup>5</sup> The motion to cite in owners of property abutting Brockway Ferry Road, excepting Behrendt, is denied.

B. Abutting Owner James A. Behrendt

The court concludes that James A. Behrendt, an abutting owner on Brockway Ferry Road, is a necessary party for the following reason: the Behrendt property is the beneficiary of a deeded right of way over and across the plaintiffs’ property to and from Brockway Ferry Road. While the Behrendt property interest may be statutorily protected pursuant to General Statutes § 13a-55<sup>6</sup> and the deed, the property interests of the plaintiffs and Behrendt are inherently and intrinsically interwoven as a matter of law. For this reason, the court grants the motion to cite in Behrendt.

C. The State

The defendant claims that the State is a necessary party on the grounds that if the plaintiffs are successful, the public’s easement of travel to the river will be extinguished. In *Leydon v. Greenwich*, 257 Conn. 318, 332 n.17, 777 A.2d. 552 (2001), the Court held that the public trust doctrine does not necessarily allow members of the public access to public beaches over land or roads. “Under the public trust doctrine, members of the public have the right to access the portion

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<sup>5</sup> Section 52-108, discussing non-joinder and misjoinder of parties, provides: “An action shall not be defeated by the nonjoinder or misjoinder of parties. New parties may be added and summoned in, and parties misjoined may be dropped, by order of the court, at any stage of the action, as the court deems the interests of justice require.”

<sup>6</sup> General Statutes § 13a-55 provides in relevant part: “Property owners bounding a discontinued or abandoned highway, or a highway any portion of which has been discontinued or abandoned, shall have a right-of-way for all purposes for which a public highway may now or hereafter used over such discontinued or abandoned highway to the nearest or most accessible highway . . . .”

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