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| DOCKET NO. FST-CV18-6038249-S | : | SUPERIOR COURT |
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| REDEVELOPMENT AGENCY OF | : | J.D. OF STAMFORD/NORWALK |
| THE CITY OF NORWALK; and | : | |
| CITY OF NORWALK | : | AT STAMFORD |
| | : | |
| V. | : | |
| | : | |
| ILSR OWNERS LLC; | : | |
| WALL ST OPPORTUNITY FUND, LLC; | : | |
| KOMI VENTURES, LLC; | : | |
| MILLIGAN REAL ESTATE LLC; | : | |
| JASON MILLIGAN; and | : | |
| CC RIVINGTON LLC | : | DECEMBER 6, 2018 |

**PLAINTIFFS' OBJECTION TO DEFENDANTS' MOTIONS TO STAY**

Plaintiffs the Redevelopment Agency of the City of Norwalk (the "Agency") and the City of Norwalk (the "City") (collectively, the "Plaintiffs") hereby object to the two December 4, 2018 motions to stay this action pending mediation filed by defendants, Wall St Opportunity Fund, LLC; Komi Ventures, LLC; Milligan Real Estate LLC; and Jason Milligan (the "Milligan Defendants") (No. 116.00) and defendant, ILSR Owners LLC ("ILSR")[1] (No. 118.00) (collectively, "Defendants[2]"). The Defendants seek to stay this action in the eleventh hour before the December 10-11, 2018 hearing on Plaintiffs' application for temporary injunction based upon two provisions in the Land Disposition and Development Agreement (the "LDA") requiring the parties thereto to submit to mediation/arbitration under certain circumstances ("ADR provision"). Notably, the Milligan Defendants are not parties to the LDA.

However, the equities of this case demand that the Court deny the Defendants' motions to stay because, absent an order from the Court enjoining the Milligan Defendants in the ways requested in the Plaintiffs' Application for Temporary Injunction ("Application"), the Plaintiffs

[1] ILSR asked for and was granted permission by the Court to not participate in the injunction hearing. Therefore, it is unclear why ILSR requires a stay of the action at this juncture.

[2] As of the date of this Objection, defendant CC Rivington, LLC had not filed a motion to stay or joined in on the motions to stay filed by the Milligan Defendants or ILSR. Accordingly, any reference herein to the "Defendants" does not include CC Rivington, LLC, unless otherwise indicated.

will be irreparably harmed. Further, the Court should deny the Milligan Defendants' motion to stay specifically because the ADR provision of the LDA do not apply to the Milligan Defendants or the Plaintiffs' claims against the Milligan Defendants. Alternatively, the Plaintiffs request that the Court defer entering a stay until after the hearing on Plaintiffs' Application and the Court's determination regarding the same. No prejudice would befall any of the parties if this Court were to hear and render judgment on the Plaintiffs' Application before ruling on the Defendants' motions to stay.

## I. BRIEF BACKGROUND.

In accordance with powers delegated to it, the Agency prepared a redevelopment plan entitled "Wall Street Redevelopment Plan" (the "Redevelopment Plan") for the purposes of redeveloping approximately 67 acres in Norwalk ("Redevelopment Area") to address and materially improve substandard, deteriorated, and/or blighted conditions. Compl. ¶ 9. The approval of the Redevelopment Plan included a variety of stakeholders in Norwalk including the Housing Authority of the City of Norwalk, the Norwalk Planning Commission, and the Norwalk Common Council, all of which reviewed and approved the Redevelopment Plan. *Id.* ¶¶ 12-15. Several public hearings were also held with regard to the Redevelopment Plan where the citizens of Norwalk could be heard. *Id.*

Consistent with the Redevelopment Plan, the Plaintiffs issued a Request for Proposals, seeking a private developer partner to redevelop part of the Redevelopment Area (the "Project Site"). *Id.* ¶ 17. Ultimately, the Plaintiffs selected non-party Poko-IWSR Developers, LLC ("Poko") as the developer, subject to entering into a mutually agreeable land disposition and development agreement. *Id.* ¶¶ 19-20. On or around November 14, 2007, the Plaintiffs and Poko entered into a Land Disposition and Development Agreement (the "LDA") wherein Poko was designated as the approved redeveloper for the Project Site. *Id.* ¶¶ 21-22. The LDA was

then recorded on the Norwalk Land Records, thereby subjecting any subsequent person(s) acquiring an interest in the Project Site, or any portion thereof, to the terms and conditions of the LDA. *Id.* ¶¶ 30-31.

As more fully described in the Complaint, in connection with the redevelopment of the Project Site, the Agency conveyed to Poko two municipal parking lots within the Project Site at a fraction of their value. *Id.* ¶ 34. Per the terms of the LDA, Poko agreed, *inter alia*, that any property to be acquired for purposes of the redevelopment would not be used for speculation in land holdings; that Plaintiffs were relying on Poko's qualifications and identity, which were of particular concern to the Plaintiffs with regard to Poko's faithful performance of its obligations under the LDA; and that Poko would not transfer the Project Site or any portion of it prior to the completion of certain improvements without the prior written consent of the Agency except for certain permitted transfers. *Id.* ¶ 38. With regard to unpermitted transfers, Section 13.2(D) of the LDA required Poko to provide the Agency with information necessary for the Agency to ensure that the proposed transferee had the requisite qualifications to become the approved redeveloper and to acquire the Agency's consent in advance of any proposed transfer. *Id.* ¶¶ 40-42. The proposed transferee is required expressly to assume in writing all the obligations of the Redeveloper under the LDA. *Id.* ¶ 43.

Poko eventually assigned its rights and obligations under the LDA relating to the Project Site to ILSR, which transfer was permitted under Section 13.2 of the LDA. *Id.* ¶¶ 52-56. ILSR eventually transferred certain parcels within the Project Site to defendant Wall St, controlled by Jason Milligan, in direct contravention of the LDA's terms regarding unpermitted transfers and the requirements for Agency vetting and consent. *Id.* ¶¶ 69-75. Accordingly, although Wall St is the record owner of the Properties, it is not the approved, recognized

Redeveloper under the LDA. *Id.* ¶ 83. This unpermitted transfer, together with the series of subsequent real estate transactions among the Milligan Defendants regarding the Project Site -- all of which were effectuated without the Agency's consent -- are at the heart of this action. In particular, and notwithstanding the Plaintiffs' repeated objections, the Milligan Defendants continued to encumber the Project Site properties and even went so far as to demolish one of the buildings within the Project Site without complying with the applicable ordinances of the City of Norwalk. *Id.* ¶¶ 89-105. Since filing this action, Wall St has continued to encumber the properties by entering into leases, seeking permits to operate various businesses in one of the Phase II properties, 97 Wall Street, and has obtained a permit to operate a smoothie store at 97 Wall Street, not a contemplated use of the property under the LDA.

On September 25, 2018, the Plaintiffs filed this action, alleging a breach of contract claim in count one against ILSR and another defendant, CC Rivington, LLC (*see* fn 1, supra); a violation of the Connecticut Unfair Trade Practices Act ("CUTPA") against all defendants in count two; unjust enrichment against the Milligan Defendants in count three; and a claim for tortious interference against all defendants in count four. By way of their prayer for relief, the Plaintiffs seek, *inter alia*, specific performance and damages against ILSR and CC Rivington pursuant to the LDA as well as damages and a temporary and permanent injunction against the Milligan Defendants to enjoin the Milligan Defendants from, *inter alia*, selling, further encumbering, or making any material physical alterations to the Project Site properties. On December 4, 2018 -- over two months after the commencement of this action and less than one week before the hearing on Plaintiffs' Application -- the Milligan Defendants and ILSR filed their respective motions to stay.

## II. THE COURT SHOULD DENY THE DEFENDANTS' MOTIONS TO STAY.

Various principles of law are relevant to this objection. First, "[t]he granting of an application or a motion for a stay of an action or proceeding is addressed to the discretion of the trial court . . . ." *Voluntown v. Rytman*, 21 Conn. App. 275, 287, *cert. denied*, 215 Conn. 818 (1990). In exercising that discretion, courts are to consider a variety of factors, including: (1) the likelihood of success on appeal; (2) whether a stay is necessary to avoid irreparable harm; (3) the effect of a stay on other parties; and (4) the public interest. *Griffin Hosp. v. Comm'n on Hospitals & Health Care*, 196 Conn. 451, 456-57 (1985). The *Griffin Hosp.* court analogized the above-quoted balancing test with the standard employed in a temporary injunction action:

> In the analogous situation of a temporary injunction to preserve the status quo until the rights of the parties can be determined after a full hearing on the merits, we have said that 'the court is called upon to *balance the results which may be caused to one party or the other*, and if it appears that to deny or dissolve it may result in great harm to the plaintiff and little to the defendant, the court may well exercise its discretion in favor of granting or continuing it, unless indeed, it is very clear that the plaintiff is without legal right.'

(Emphasis added.) *Id.*, at 457, citing *Olcott v. Pendleton*, 128 Conn. 292, 295 (1941).

With respect to contract provisions for mediation/arbitration: C.G.S. § 52-409 provides that the court should stay a pending civil action when the claims and parties therein are subject to an arbitration provision. "To establish its right to a stay of proceeding under [Section 52-409] a movant must establish the following: (1) that both it and the plaintiff in the action sought to be stayed are parties to a written arbitration agreement; (2) that at least one issue involved in the action to be stayed is referable to arbitration under the agreement; and (3) that the movant is ready and willing to proceed with the arbitration." *Kutcher v. Connecticut Vascular & Thoracic Surgical Associates, PC*, No. CV095026130S, 2010 WL 398219, at *2 (Conn. Super. Ct., J.D. of Fairfield, Jan. 7, 2010).

"Even though it is the policy of the law to favor settlement of disputes by arbitration . . . arbitration agreements are to be strictly construed and such agreements should not be extended by implication . . .. Persons thus cannot compel arbitration of a disagreement between or among

parties who have not contracted to arbitrate that disagreement between or among themselves." *Mastrobattisto, Inc. v. Tabacco & Son Builders, Inc.*, No. CV010511899S, 2002 WL 31046017, at *1 (Conn. Super. Ct., Aug. 9, 2002) [32 Conn. L. Rptr. 714]. "[Consensual a]rbitration is a creature of contract and there must be an express agreement to arbitrate in order for the arbitrators to have authority and the court to have jurisdiction . . . ." *Office v. iEDI Group, Inc.*, No. CV010456900, 2002 WL 31304887, at *3 (Conn. Super. Ct., Sept. 19, 2002). Indeed, "[a] person can be compelled to arbitrate a dispute only if, to the extent that, and in the manner which, he has agreed to do so . . . No one can be forced to arbitrate a contract dispute who has not previously agreed to do so . . . Therefore, [t]he authority for arbitration must be derived from the agreement of the parties . . . and the relevant provisions of applicable statutory directives . . . ." *Id.*

In addition, the dispute between the parties must be within the scope of the relevant arbitration provision. A reviewing court must look to the relevant agreement to determine if a claim is subject to arbitration. *Id.* "[W]here the litigation involves both arbitrable and non-arbitrable claims courts of this state, other states and federal courts have refused to stay the entire litigation, and have allowed the litigation to proceed with respect to any non-arbitrable claims." *Id.* at *4, n. 7. "The decision whether to stay a litigation in situations where there are arbitrable and non-arbitrable issues is largely a matter within the court's discretion." *Ne. Utilities v. Century Indem. Co.*, No. X03CV 980495496S, 1999 WL 476274, at *10 (Conn. Super. Ct., June 21, 1999).

"Decisions that do not allow arbitrable and nonarbitrable claims to be split typically do so on the basis of strict statutory construction, noting that under § 52-409 a defendant is entitled to a statutory stay . . . . [T]he remedy afforded to a successful movant under § 52-409 is 'a stay of the action or proceeding,' not merely a stay of that part of the action or proceeding that involves arbitrable issues that pertain directly to the applicant." *Kutcher*, supra, 2010 WL 398219 at *3. Where the requirements of § 52-409 are not met, however (*see id.* at *2), the court need not stay the pending civil action.

However, *even where all parties are subject to an arbitration clause*, a court will interfere upon a clear showing of inequity, particularly upon an application for a temporary injunction. *Wauregan Mills, Inc. v. Textile Workers Union of Am., A.F.L.-C.I.O.*, 21 Conn. Supp. 134, 137-38 (Super. Ct. 1958); *see also PEG Reinsurance Co. LTD v. Discover Reinsurance Co.*, No. CV064026304S, 2006 WL 3360692, at *2 (Conn. Super. Ct. Nov. 7, 2006) ("When presented with a motion for stay pendente lite, the court must apply a balancing of equities test. The equities to be considered are the general equitable considerations which are involved in the issuance of a temporary injunction to preserve the status quo pendente lite." [Internal quotation marks omitted.])."

Lastly, and importantly, the issue of arbitrability does not prevent a court from issuing injunctive relief because the court retains authority to do so pursuant to C.G.S. § 52-422. *Nason Partners, LLC v. Nw. Connecticut Transit Dist.*, No. LLICV135007436S, 2013 WL 3766890, at *5, n. 7 (Conn. Super. Ct. June 28, 2013). C.G.S. § 52-422 states, in pertinent part: "At any time before an award is rendered pursuant to an arbitration under this chapter, the superior court . . . may make forthwith such order or decree, issue such process and direct such proceedings *as may be necessary to protect the rights of the parties* pending the rendering of the award and to secure the satisfaction thereof when rendered and confirmed." (Emphasis added). While the language of § 52-422 may appear to indicate that arbitration must be pending in order for the statute to apply, the *Nason Partners* court invoked § 52-422 even though the parties had not yet sought arbitration. The court did so to make the point that it would have the power to order the injunctive relief requested regardless of whether the issues would be addressed in arbitration at a later date. *Nason Partners*, supra, at *5, n. 7. This is exactly the situation here. The Court has the discretion to hear argument on and order injunctive relief regardless of whether any issues may be ultimately addressed in an arbitration.

A. The ADR Provision Does Not Apply To The Milligan Defendants Nor To The Claims Against Them And Therefore, The Court Should Deny The Milligan Defendants' Motion To Stay.

With regard to the Milligan Defendants, this Court should deny their motion to stay specifically because the Milligan Defendants are not parties to the LDA and thus, the ADR provision does not apply to their dispute with the Plaintiffs. Under C.G.S. § 52-409, a movant must establish the following: "(1) that both it and the plaintiff in the action sought to be stayed are parties to a written arbitration agreement; (2) that at least one issue involved in the action to be stayed is referable to arbitration under the agreement; and (3) that the movant is ready and willing to proceed with the arbitration." *Kutcher v. Connecticut Vascular & Thoracic Surgical Associates, PC*, No. CV095026130S, 2010 WL 398219, at *2 (Conn. Super. Ct., J.D. of Fairfield, Jan. 7, 2010). Here, the Milligan Defendants can in no way demonstrate that they are parties to a written arbitration agreement. On that basis alone, the Court must deny their motion to stay.

Moreover, the Plaintiffs' claims against the Milligan Defendants are not encompassed by the ADR provision in the LDA.

Section 18.1 of the LDA provides:

> *The parties hereto* shall reasonably attempt to resolve any dispute arising between the parties hereto *concerning any matter of performance under, or interpretation or breach of, this Agreement*, by mediation in Norwalk….

(Emphasis added.) *See* LDA, Section 18.1 at p. 80. Similarly, Section 18.2 contains the following language regarding arbitration:

> In the event *the parties* do not agree to or cannot resolve such dispute through mediation as provided in Section 18.1, such dispute shall be settled by arbitration in Norwalk, Connecticut….

(Emphasis added.) *Id*., Section 18.2 at p. 81.

While the Milligan Defendants argue that the Plaintiffs allege that they are bound to the provisions of the LDA (Milligan Defendants' Motion to Stay at p. 2), no such allegation in the Complaint exists. Indeed, the paragraph of the Complaint cited by the Milligan Defendants in

support of this claim merely cites the portion of the LDA that makes clear that no unauthorized transfer of the Project Site properties will limit the Agency's rights or remedies resulting from the LDA. *Id.*; *see also* Compl. ¶ 44. A more detailed reading of the Plaintiffs' Complaint demonstrates that the Plaintiffs do not acknowledge the Milligan Defendants as a party to the LDA. In fact, the Plaintiffs specifically alleged that Wall St is not the recognized Redeveloper under the LDA. Compl. ¶ 83. In addition, Plaintiffs specifically allege that Wall St has failed to take any of the required actions necessary to become the Redeveloper. Compl. ¶¶ 81, 82.

In any event, the ADR provision provides for mediation only for those disputes "arising between the parties hereto *concerning any matter of performance under, or interpretation or breach of, this Agreement* . . . ." LDA, Section 18.1 at p. 80. The claims against the Milligan Defendants, however, do not sound in contract law but are based in tort law. More particularly, while the Plaintiffs allege a claim for breach of contract against ILSR under the LDA, there is no breach of contract claim asserted against the Milligan Defendants because they are not party to the LDA. Instead, the Plaintiffs' claims against the Milligan Defendants include a violation of CUTPA, unjust enrichment and tortious interference based not on the specific provisions of the LDA but on the Milligan Defendants' actions with respect to the Project Site/Redevelopment Area.

As noted above, Connecticut common law is clear that a reviewing court must look to the relevant agreement to determine if arbitration is proper. *Office v. iEDI Group, Inc.*, supra, at *3. For example, in *Moore v. Bender*, No. FSTCV136020376S, 2014 WL 4099345 (Conn. Super. Ct., J.D. of Stamford-Norwalk, July 14, 2014), the court denied the defendants' motion to stay pending arbitration where the arbitration agreement applied only to disputes "as to the interpretation or application of [the] Agreement." *Id.*, at *12. Because the plaintiff's claims for breach of fiduciary duties sounded in tort law and not contract law, the court held that the arbitration provision did not apply to the case at hand. *Id.* The *Moore* court held: "[C]ourts of law can enforce only such agreements as the parties actually make . . . No one is under a duty to submit any question to arbitration except to the extent that he has signified his willingness . . . .

Here, the arbitration clauses are clear in their limitations." *Id.* Similarly here, the Plaintiffs' claims against the Milligan Defendants do not concern "*any matter of performance under, or interpretation or breach of*" the LDA because the Milligan Defendants are not parties to the LDA and are not the approved Redeveloper under the LDA. As noted above, the Plaintiffs seek only to hold the Milligan Defendants accountable for their actions based on theories of tort law. Accordingly, not only is the ADR provision inapplicable to the Milligan Defendants specifically, but it is also inapplicable to the particular dispute between the Milligan Defendants and the Plaintiffs.

To the extent the Milligan Defendants rely on an equitable estoppel theory to combat the reality that they are not parties to the LDA and thus, not subject to the ADR provision therein, that argument is also unavailing. "Equitable estoppel principles are used to compel arbitration by or against a non-signatory. Where a non-signatory has invoked, taken advantage of, or asserted rights under a contract with an arbitration clause, traditional principles of law and equity bind the non-signatory to that contract's arbitration provisions as well. This prevents a party who knowingly exploits an agreement, from taking advantage of the benefits of the contract while simultaneously disavowing its burdens . . ." *Armetta v. Corvo*, No. X04–HHD–CV13–60466165, 2015 WL 5315247, at *3 (Conn. Super. Ct., J.D. of Hartford, Aug. 11, 2015) [60 Conn. L. Rptr. 825]. In other words, "where a party has accepted benefits under a contract, or claims rights pursuant to a contract, it is bound by the provisions in that contract—including arbitration provisions." *Id.* at *4. Here, the Milligan Defendants have not accepted benefits from, and do not claim rights pursuant to, the LDA. Indeed, as alleged in the Complaint, the Milligan Defendants have disavowed the LDA and the obligations therein and the Plaintiffs do not acknowledge the Milligan Defendants as the Redeveloper under the LDA. Compl. ¶¶ 80-83.[3]

[3] Of particular import here is the Milligan Defendants' Motion to Strike, Memorandum of Law in Support, and Second Motion for Stay filed today, December 6, 2018 (Nos. 120.00, 121.00, 122.00). While the Plaintiffs have not had an opportunity to fully read and respond to the approximately forty pages of law and argument filed two days before the December 10-11

The Milligan Defendants rely in part on *Weyher v. Harrison*, No. FST–CV14–6020809S, 2014 WL 4358375 (Conn. Super. Ct., J.D. of Stamford-Norwalk, July 23, 2014) [58 Conn. L. Rptr. 629] for the proposition that it may stay this action on the basis of the ADR provision even though there is no agreement between the Milligan Defendants and the Plaintiffs to arbitrate any claims because they argue that the claims against the Milligan Defendants' are "intertwined" with the LDA. Even if that were true, *Weyher* does not include the factual scenario presented to this Court, which includes the irreparable harm to the Plaintiffs should the Court not hear Plaintiffs' preliminary injunction claims. Accordingly, this case is inapposite. Moreover, as noted in *Wauregan Mills, Inc.*, supra, 21 Conn. Supp. at 137-38, a court will interfere upon a clear showing of inequity, even where all parties are subject to an arbitration clause. This is particularly true upon an application for a temporary injunction. *Id.*; *see also PEG Reinsurance Co. LTD*, supra, 2006 WL 3360692 at *2 ("When presented with a motion for stay pendente lite, the court must apply a balancing of equities test. The equities to be considered are the general equitable considerations which are involved in the issuance of a temporary injunction to preserve the status quo pendente lite." [Internal quotation marks omitted.])."

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hearing, one of the Milligan Defendants' arguments therein is particularly relevant to the present objection. In Section III.A.2 of the Milligan Defendants' memorandum of law in support of its motion to strike (pages 12-13), the Milligan Defendants argue: "Further, A-C of Plaintiffs' ad damnum clause, seeking an order of specific performance, should be stricken on the basis ***that Plaintiffs are not entitled to compel specific performance against a non-signatory to the contract***…. Connecticut appellate authority has long held that the remedy of specific performance is only available to the parties of an underlying contract … Conversely, there is no law in Connecticut, persuasive or otherwise, that supports the proposition that a party to a contract can compel specific performance against a non-party to a contract. In this case, Plaintiffs' Complaint seeks to unwind certain transactions and disgorge the Milligan Defendants' of their alleged proprietary interests in the Properties under the guise of "specific performance", ***which claim, as alleged, is based on an exclusive remedy clause in an instrument to which the Milligan Defendants are non-signatories***…." (Emphasis added.) The Milligan Defendants' attempt to argue, on one hand, that the ADR provision in the LDA should apply to them based on principles of equity, while arguing on the other hand that it cannot be bound of by the specific performance remedy in the LDA because they are not signatories to the LDA, is not only contradictory but is antithetical to the very purpose of equitable estoppel.

Lastly, to the extent the Defendants argue that this Court is required to stay the *entire* action if even one of the claims asserted by the Plaintiffs is subject to arbitration, that argument is inapplicable to this case. As noted above, "[d]ecisions that do not allow arbitrable and nonarbitrable claims to be split typically do so on the basis of strict statutory construction, noting that under § 52-409 a defendant is entitled to a statutory stay . . . . [T]he remedy afforded to a successful movant under § 52-409 is 'a stay of the action or proceeding,' not merely a stay of that part of the action or proceeding that involves arbitrable issues that pertain directly to the applicant." *Kutcher*, supra, 2010 WL 398219 at *3. For the foregoing reasons, § 52-409 does not apply to the Plaintiffs' claims against the Milligan Defendants because the Milligan Defendants are not parties to the LDA and thus, are not subject to the ADR provision. Thus, the statutory mandate in § 52-409 that a court stay the entire action does not apply here.

In any event, "[t]he decision whether to stay a litigation in situations where there are arbitrable and non-arbitrable issues is largely a matter within the court's discretion." *Ne. Utilities*, supra, 1999 WL 476274 at *10. Numerous Connecticut courts have exercised this discretion. *See, e.g., Office v. iEDI Group, Inc*., supra, 2002 WL 31304887 (granting motion to stay as to those defendants subject to the arbitration agreement at issue but denying motion to stay as to defendant not subject to arbitration provision); *Beaumont v. Swiderski*, No. 119276, 1994 WL 161300 at *2 (Conn. Super. Ct., April 26, 1994) (staying only that portion of the litigation involving the arbitrable claims and allowing the balance of the litigation involving the non-arbitrable claims to continue); *see also Ne. Utilities v. Century Indem. Co.*, supra, 1999 WL 476274, wherein the court noted:

> Where the litigation involves both arbitrable and non-arbitrable claims courts of this state, other states and federal courts have refused to stay the entire litigation, and have allowed the litigation to proceed with respect to any non-arbitrable claims…. The decision whether to stay a litigation in situations where there are arbitrable and non-arbitrable issues is largely a matter within the court's discretion…. The goal of the FAA and the Connecticut arbitration statutes, which were enacted to ensure judicial enforcement of private agreements to arbitrate 'is not advanced by forcing a litigant that has not agreed to arbitrate to delay the prosecution of its claims [pending arbitration].'

*Id.* at *9-*10. Here, the Plaintiffs have not agreed to arbitrate their dispute with the Milligan Defendants. Accordingly, this Court should, at the very least, deny the Milligan Defendants' motion to stay and allow the case to proceed on Plaintiffs' claims against the Milligan Defendants.

B. Defendants' Motions To Stay Should Be Denied Notwithstanding The ADR Provision.

Assuming the ADR provision is controlling as to either or both Defendants, application of the *Griffin Hospital* standards to this case -- together with the principle noted in *Wauregan Mills* that a court may interfere with an arbitration clause upon a clear showing of inequity -- demonstrates that the Defendants' motions to stay should be denied notwithstanding the ADR provision in the LDA. First, and as more fully detailed in the memorandum of law in support of Plaintiffs' Application (No. 104.00) ("Application Memo"), the Plaintiffs have a reasonable degree of probability of success on their breach of contract claim against ILSR and CC Rivington, LLC (Plaintiffs do not assert a breach of contract claim against the Milligan Defendants), as well as their tort law claims for violation of CUTPA, unjust enrichment and tortious interference in this action.

Second, a stay is not necessary to avoid irreparable harm to the Defendants, nor do the Defendants claim that they will be irreparably harmed if this Court were to deny their motion to stay. Indeed, as to the effect on the parties, the Plaintiffs will be irreparably harmed if this Court were to grant the Defendants' motions to stay. Absent an order from the Court enjoining the Milligan Defendants in the ways requested in the Plaintiffs' Application, the Plaintiffs and the residents of Norwalk will suffer irreparable harm in that the redevelopment of the Wall Street area, as contemplated by the Redevelopment Plan, is threatened. Wall St has not taken the appropriate steps to seek redeveloper status and has not put forth its written agreement to be bound by the LDA.

To the contrary, the Milligan Defendants have taken several actions that threaten the redevelopment of the Project Site as contemplated under the LDA, and that alter the status quo and make it more complicated and potentially difficult for this Court to grant the Plaintiffs effective relief. These actions include encumbering the properties with a $5,200,000 mortgage in addition to the original $5,800,000 mortgage, materially physically altering one of the Project Site properties by demolishing a 2.5 story building, and entering into a lease with his other controlled entities of the parking lot at 23 Isaacs Street. *See* Compl. ¶¶ 85-105; Application Memo at 6-10. These actions are antithetical to the redevelopment goals of the Redevelopment Plan and the LDA. Absent an order enjoining the Milligan Defendants from taking any such further actions, as prayed for in the Plaintiffs' Application, the Milligan Defendants will continue to take similar actions, and have taken such actions, as noted above. Any such additional actions will make it much more difficult to return the subject Properties to the status quo should Plaintiffs prevail on their claims, particularly their claim for specific performance of the LDA, which would void the conveyance of the Properties from ILSR to Wall St and the other unpermitted real estate transactions further detailed in the Complaint.

Lastly, the public interest would not be served in granting the Defendants' motions to stay because a stay would serve merely to promote inefficiency in the judicial process. As noted above, the Court has authority pursuant to C.G.S. § 52-422 to order a temporary injunction notwithstanding a pending or impending arbitration. *See Nason Partners, LLC*, supra at *5, n. 7. Thus, even if this Court were to grant the Defendants a stay at this time, the Plaintiffs would likely seek to renew their Application on the basis of § 52-422, which process would be an inefficient use of judicial resources. In other words, even with a stay for ADR, the Plaintiffs would still have the right -- and indeed, the urgent need -- to seek a temporary injunction. Moreover, the public interest would be better served in proceeding with this action generally and, more specifically, with Plaintiffs' Application. As noted above, the Milligan Defendants have taken several steps that are antithetical to the Redevelopment Plan and LDA and, thus, harmful to the public. Accordingly, the Court should deny the Defendants' motions to stay.

C. Alternatively, The Court Should Defer Ruling On Defendants' Motions To Stay Until After The Hearing On Plaintiffs' Application For Temporary Injunction.

In the alternative, the Court should defer ruling on the Defendants' motions to stay until after the hearing on the Plaintiffs' Application and the court's decision regarding the same. As noted above, the Court has the authority, pursuant to § 52-422 to enter any orders "*as may be necessary to protect the rights of the parties* pending the rendering of the [arbitration] award." Absent an order from the Court enjoining the Milligan Defendants in the ways requested in the Plaintiffs' Application, the Milligan Defendants will continue to take similar actions with respect to the Project Site properties in the face of the Plaintiffs' objections thereto. Any such additional actions will make it much more difficult to return the Project Site properties to the status quo, should Plaintiffs prevail on their claims.

Accordingly, for all of the above reasons, the Court should defer ruling on the Defendants' motions to stay until after the Court has rendered its decision with respect to the Plaintiffs' Application.

## III. CONCLUSION.

In conclusion, and for all of the above reasons, the Plaintiffs, the Redevelopment Agency of the City of Norwalk and the City of Norwalk, respectfully request that this Court deny the Defendants' motions to stay. Alternatively, the Plaintiffs request that this Court defer ruling on the motions to stay until after the hearing on Plaintiffs' application for temporary injunction and the Court's decision regarding the same.

Respectfully submitted,

THE PLAINTIFFS,

REDEVELOPMENT AGENCY OF THE CITY OF NORWALK

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## CERTIFICATION OF SERVICE

The undersigned hereby certifies that on December 6, 2018 a copy of the foregoing was filed electronically through the Court's Electronic Filing System and served by electronic means via email transmission on the following counsel of record:

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