

**Matter of Lombardi Caterers, Inc. v Incorporated
Vil. of Port Jefferson**

2007 NY Slip Op 30502(U)

March 28, 2007

Supreme Court, Suffolk County

Docket Number: 0007867/2006

Judge: Peter Fox Cohalan

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SUPREME COURT - STATE OF NEW YORK
I.A.S. TERM, PART XXIV - SUFFOLK COUNTY

PRESENT:

Hon. PETER FOX COHALAN

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In the Matter of the Application of LOMBARDI
CATERERS, INC. A domestic corporation, d/b/a
LOMBARDI'S ON THE SOUND AT PORT
JEFFERSON COUNTRY CLUB AT HARBOR HILLS,

Petitioner,

For a Preliminary Injunction and a Judgment pursuant to
Articles 63 and 78 of the Civil Practice Law and Rules
for an Order allowing Petitioner to resume quiet
enjoyment of its parking privileges at the premises it
licences from the INCORPORATED VILLAGE OF
PORT JEFFERSON ("THE VILLAGE") and enjoining
THE VILLAGE from ticketing patrons of Petitioner
pending final determination,

-against-

THE INCORPORATED VILLAGE OF PORT
JEFFERSON,

Respondent.

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Upon the following papers numbered 1 to 20 read on this motion for preliminary injunction _____;
Notice of Motion/Order to Show Cause and supporting papers 1-8 _____; Notice of Cross-Motion and
supporting papers _____; Answering Affidavits and supporting papers 9-17 _____; Replying Affidavits
and supporting papers 18-20 _____; Other _____; and after hearing counsel in support of and opposed
to the motion it is,

ORDERED that this petition seeking a preliminary injunction pursuant to CPLR
§6301 et. seq., and an Article 78 special proceeding in the nature of a declaratory judgment or
prohibition against the respondent, Incorporated Village of Port Jefferson (hereinafter Village),
seeking to permanently enjoin it from issuing parking tickets is hereby decided as follows:

ORDERED that the petitioner is granted a preliminary injunction pursuant to
CPLR §6301 enjoining the respondent Village from issuing parking tickets to customers using
the upper parking lot at the Port Jefferson Country Club at Harbor Hills (hereinafter Club) for
the restaurant operations of the petitioner not affiliated with or involving the catering facilities
at the club, subject to the contract between the Village and the petitioner which mandated
valet parking and use of the lower parking lot. The temporary restraining order, previously
granted on April 6, 2006 and continued on September 27, 2006 during oral argument of the
petition, will be continued upon the filing by petitioner of an undertaking in the amount of
\$10,000.00 pursuant to CPLR §6312 (b).

ORDERED that the Article 78 proceeding seeking a declaration with respect to the use of the upper parking lot by the petitioner is denied at this time. There are numerous issues of fact which require a trial concerning the intention of the parties as to the signed agreement, dated January 12, 2004, with respect to the use of the upper parking lot at the Club for restaurant patrons not affiliated with the petitioner's catering operations.

The petitioner is a domestic corporation which operates the catering and restaurant facilities at the Club in the Village. The petitioner was granted a license on January 12, 2004 to operate the respondent's facilities at the Club for a period of twenty (20) years. The petitioner operates both the restaurant facilities for the public at the Club as well as concurrently running a catering facility at the Club. The Village, on or about June 4, 2005, posted signs restricting use of the upper parking lot at the Club to village residents and members of the Club and began issuing village parking citations alleging violation of a local village ordinance restricting parking to village residents and members of the Club. The petitioner argues that until June 4, 2005 public patrons of the restaurant facilities used the upper parking lot to park their vehicles. The petitioner brought this action against the Village arguing that the licensing provisions in the agreement allow for the restaurant patrons to park in the upper lot. The Village disputes this and argues that the Port Jefferson Village Code as recently amended on March 21, 2005 prohibits parking in the Club's upper lot, unless the motor vehicle carries a current Club member parking decal, a guest pass or a village resident parking decal. See, Village Code Chapter 245, Section 25. This ordinance was passed in response to community complaints by village residents unable to park in the upper lot. This lawsuit thereafter ensued.

The constitutionality of a legislative enactment is reviewable in a declaratory judgment action brought by special proceeding. **Sherwood Village Cooperative Section "B", Inc. v. City of New York**, 173 AD2d 461, 570 NYS2d 86 (2nd Dept. 1991); **Sheldon v. Town of Highlands**, 138 AD2d 86, 531 NYS2d 93 (2nd Dept. 1988). The petition before the Court seeks to determine a contract interpretation of the licensing provisions between the petitioner and the Village, and the local parking ordinance recently enacted by the Village to address community complaints about parking at the facility. The petitioner argues that the ordinance impairs its contract rights with the Village. The agreement between the parties provides in pertinent part in paragraph 29:

"**Licensee** [Lombardi's] agrees that an essential term of this agreement is that it will provide valet parking for all persons attending catered events/parties at the clubhouse... It is further understood and agreed that all such valet parking shall take place in the lower parking lot ... **Licensee** shall be obligated to provide and maintain sufficient signage to alert all persons arriving for catered events/parties at the clubhouse that such valet parking is mandatory and available at such designated location. The contract with the person or entity providing such valet parking services shall be subject to the prior written approval of the **Village**.

Further, in paragraph 30, the parties designate and identify that the “clubhouse forms a portion of village property and the primary purpose of the clubhouse is to provide a **full service restaurant**, meeting room(s) and locker facilities for Village residents, golf and tennis members of the Port Jefferson Country Club and their guests.” The parties agree that the contract or agreement entered into by them is silent as to parking rights of the non-village restaurant patrons using the facilities at the Club.

As a general rule, in a contract action, if the Court can determine the intent of the parties from the terms of the written agreement itself, without resort to extrinsic or parol evidence, the question can then be decided by the Court as a matter of law. **Rom Terminals, LTD. V. Scallop Corp.**, 141 AD2d 358, 529 NYS2d 304 (2nd Dept. 1988), app den. 73 NY2d 707, 539 NYS2d 300. See also, **Costello v. Casale**, 281 AD2d 581, 723 NYS2d 44 (2nd Dept. 2001). In **Teal v. Place**, 85 AD2d 788, 455 NYS2d 309 (3rd Dept. 1981) the Court stated:

“[t]he first and best rule of construction of every contract, and the only rule we need here, is that, when the terms of a written contract are clear and unambiguous, the intent of the parties must be found therein’ (citing **Nichols v. Nichols**, 306 NY490, 496, 119 N.E.2d 501). Where the intention of the parties is fully determinable from the language employed in the agreement (see 4 Williston, Contracts §600, at p. 280), there is no need to resort to evidence outside the written words to determine their intention. Thus, no question of fact is presented, only a question of law—the interpretation of the March 7, 1980 written contract, and summary judgment was proper (**Long Is. R.R. Co. V. Northville Inds. Corp.**, 41 NY2d 455, 461, 393 NYS2d 925, 362 N.E.2d 558; **Mallad Constr. Corp. V. County Fed. Sav. & Loan Assn.**, 32 NY2d 285, 291, 344 NYS2d 925, 298 N.E.2d 96)”

Furthermore, the rule of law on contract construction provides that no provision of a contract should be left without force and effect and as a corollary to this, that construction of a contract should not render a clause of a contract meaningless. See, **22 NY Jur. 2nd §221**. Here, in the case at bar, both parties agree that the licensing agreement between the parties is silent on the issue of parking in the upper lot for regular patrons using the restaurant facilities. However, petitioner claims the fact was inferred and agreed by restricting parking from the upper lot **only** as to catered events or parties and the Village’s attempts to now enact and enforce a new parking ordinance (Village Code Chapter 245, Section 25) preventing restaurant patrons from using the upper parking facility between April through October) compromises, violates, breaches and attempts through legislative enactment to change the contract entered into by the parties which set the rights of each of the parties with regard to this parking issue.

The respondent Village argues that the agreement is silent and therefore it was entirely within its rights as a village to enact parking code ordinances to regulate parking.

However true the Village's response, the agreement, if it is determined to contemplate parking rights and privileges in the upper lot for public restaurant patrons, may have been violated or compromised by the legislative enactment imposing a more restrictive parking requirement. Since the contract is silent on the parking issue of public patrons to the restaurant, the Court must look to the intention of the parties to the agreement and any parol evidence to discern the parties intent. In ***Lui v. Park Ridge at Terryville Association, Inc.***, 196 AD2d 579, 601 NYS2d 496 (2nd Dept. 1993) the Court set forth the Court's role in contract review by stating:

"It is settled that the responsibility to interpret a contract falls upon the court, 'which must ascertain the intention of the parties from the language which they have employed' (see, ***Carvel Corp. v. Rait***, 117 AD2d 485, 487, 503 NYS2d 406; see also, ***Mallard Constr. Corp. v. County Fed. Sav. & Loan Assn*** 32 NY 285, 291, 344 NYS2d 925, 298 NE2d 96). The '[interpretation of an unambiguous contract provision is a function for the court, and matters extrinsic to the agreement may not be considered when the intent of the parties can be gleaned from the face of the instrument' (***Teitelbaum Holdings v. Gold***, 48 NY2d 51, 56, 421 NYS2d 556, 396 NE2d 1029; see ***Chimart Assoc. v. Paul***, 66 NY2d 570, 572-573, 498 NYS2d 344, 489 NE2d 231). Thus, where the parties have set forth their agreement in a clear and complete document, their written agreement should be enforced according to its terms (see, ***W.W.W. Assocs. v. Giancontieri***, 77 NY2d 157, 162, 565 NYS2d 440, 566 NE2d 639). *A court should not, under the guise of contract interpretation, 'imply a term which the parties themselves failed to insert' or otherwise rewrite the contract* (***Mitchell v. Mitchell***, 82 AD2d 849, 440 NYS2d 54; see, ***Ives v. Ives***, 96 AD2d 643, 465 NYS2d 70; see also, ***Brands v. Urban***, 182 AD2d 287, 587 NYS2d 698)." emphasis added.

The failure to address the issue of parking for restaurant patrons or any restrictions concerning them could appear to allow the petitioner to infer that all restaurant patrons were permitted to utilize the upper parking lot. The fact that the respondent Village draws a contrary conclusion necessitates a fact finder to determine the parties intent. This intent can be gleaned from the use or failure to use contract language to address the parking claims and any other extrinsic or parol evidence to be adduced in deciding this issue. Summary disposition, as a matter of law, is therefore inappropriate when attempting to decipher the intention of the parties on the issue of parking for non-village restaurant patrons in the upper parking lot. Furthermore, the ambiguity in the contract as to village and non-village restaurant patrons and the use of the upper lot may also turn on the failure of the respondent Village to address the parking issue prior to the expression of community opposition. Thus the Village's conduct may be examined to determine the intent of paragraph 29 in the agreement during the life of the agreement prior to the enacting of Village Code §245-25. See, ***Harza Northeast, Inc. v. LehnerMcGovern Bovis, Inc.***, 255 AD2d 935, 680 NYS2d 379 (4th Dept. 1998).


Since there is a dispute about parking claims in this case and there is a failure of the agreement between the parties to address non-resident parking in the upper lot for patrons at the restaurant, it would seem to lead to an inference that the issue for the Village was non-resident parking in the upper lot for the catering/parties and not restaurant patrons. The petitioner has made a proper showing to warrant temporary injunctive relief. The purpose of a preliminary injunction is to preserve the status quo pending trial. McLaughlin, Piven, Vogel Inc. v. W. J. Nolan & Co., Inc., 114 AD2d 165, 498 NYS2d 146 (2nd Dept. 1987), appeal denied 67 NYS2d 606, 501 NYS2d 1024. In order to prevail on a motion for a preliminary injunction, the moving party has the burden of establishing, (1) a likelihood of ultimate success on the merits, (2) irreparable injury absent a granting of the requested relief and (3) the equities weigh in its favor. Upgrade Education Services, Inc. v. Rappaport, 136 AD2d 628 523 NYS2d 872 (2nd Dept. 1988); Benjamin Kurzban and Son, Inc. v. Board of Education, City of New York, 129 AD2d 756, 514 NYS2d 749 (2nd Dept. 1987). Preliminary injunctive relief lies with the sound discretion of the Court [Geres v Koch, 62 NY2d 84, 476 NYS2d 73 (1984)] and it is predicated on a clear showing of the afore-mentioned three prong test. W. T. Grant Co., v Srogi, 52 NY2d 496, 438 NYS2d 761 (1981); cf. Albini v. Solork Associates, 37 AD2d 835, 326 NYS2d 150 (2nd Dept. 1971).

As a provisional remedy, the chief function of a preliminary injunction is to prevent any conduct before judgment which would impair the ability of the Court to render the appropriate final judgment. Mucchi v. Eli Haddad Corp., 101 AD2d 724, 475 NYS2d 35 (1st Dept. 1984). Here, the contract language is silent as to the rights of the non-village public (not associated with a catered or party event) when using the Club upper parking lot to dine at the restaurant. Since the Court is unable to make a determination of the intent of the parties on this issue, the petitioner has satisfied its burden of entitlement to a temporary restraint on the Village's actions with regard to issuing parking tickets until a trial on the underlying action to determine the intent of the parties in the agreement. Clearly the equities run in favor of the petitioner since the agreement recognized the public restaurant at the Club during normal operating hours yet concerned itself only with the increased parking which might result from catered affairs or parties and made allowances to restrict parking to the lower lot by valet parking for these "special events" but did not address parking needs with regard to normal restaurant operations and the use of parking at the upper (and more convenient) lot.

Accordingly, the petition seeking a preliminary injunctive relief and restraining the Village, from enforcing Village Code §245-25 between April and October with regard to parking for non-village restaurant patrons is granted and the Village is so restrained upon the posting of the appropriate undertaking previously set forth. In all other respects the relief requested in the petition is denied pending a trial of the issues set forth in this order.

The foregoing constitutes the decision of the Court.

Dated: March 28, 2007



J.S.C.