

<b>Prinzivalli v Smithtown Bay Yacht Club, Inc.</b>
2007 NY Slip Op 33413(U)
October 18, 2007
Supreme Court, Suffolk County
Docket Number: 0000389/2007
Judge: Emily Pines
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SUPREME COURT - STATE OF NEW YORK  
**COMMERCIAL DIVISION**  
**TRIAL TERM, PART 46 SUFFOLK COUNTY**

PRESENT: Hon. Emily Pines

MOTION DATE: 6/27/07, 8/5/07  
SUBMITTED: 9/27/07, 9/27/07  
MOTION NO.: 001-MD  
002-MG Casedis

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JEROME A. PRINZIVALLI and CAMILLE  
PRINZIVALLI,

Plaintiffs,

-against-

SMITHTOWN BAY YACHT CLUB, INC,

Defendants.

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**ORDERED** that the Order to Show Cause by plaintiffs dated June 27, 2007 seeking an order directing the defendant to permit the plaintiffs to immediately berth their Zodiac boat in their boat slip no. 18 (the "Slip") located at the defendant's mariana and for a Writ of Mandamus pursuant to **CPLR §7804** directing the defendant to permit the plaintiffs to berth their boat in the Slip, and for an award of plaintiffs' legal costs and expenses incurred, is denied; and be it further

**ORDERED** that defendant's cross-motion dated August 5, 2007 seeking dismissal of this action is granted.

Plaintiffs brought this action seeking an order granting the plaintiffs the right to berth their boat in the Slip, an injunction enjoining the defendant from taking any action to interfere or prohibit the plaintiffs from berthing their boat in the Slip, damages in the amount of \$12,115.87 for dues, fees and assessments paid to the club from 1988 to present, a judgment in the amount of \$500,000.00 alleging that defendants actions were intentional, malicious and wanton and reimbursement of attorneys' fees in connection with this action.

This action arises out of plaintiffs' application to berth their 9' Zodiac inflatable boat in their slip at the defendant's

marina. According to the record, plaintiffs, who are members in good standing of the Smithtown Bay Yacht Club, Inc. ("defendant" or "SBYC"), were on a waiting list for several years awaiting a slip at the defendant's marina. In or about March 2006, the plaintiffs' came up on the waiting list for a boat slip and they were assigned slip #18. On or about April 2, 2007 plaintiffs submitted their application to berth their Zodiac boat in this slip, together with the required documents. On or about April 25, 2007, plaintiffs received a denial of their application from SBYC stating that the Board of Governors of SBYC has determined that using the slip to berth an 8'9" inflatable boat was not in the best interest of the club and that by allowing plaintiffs to use the slip in such a manner would expose SBYC to liability due to safety concerns. It is important to note that plaintiffs had submitted an application for the previous year to berth the same inflatable boat in this slip and that application was also denied.

Plaintiffs contend that these types of inflatable boats are permitted within the defendant's marina and do not pose a safety hazard. However, plaintiffs also state that many members store these inflatable boats on their larger boats. Plaintiffs claim that this denial was arbitrary and capricious and based on a personal dislike for the plaintiffs, not in furtherance of SBYC's objectives.

In opposition of plaintiffs' Order to Show Cause and in support of its cross-motion for dismissal, defendant argues that the plaintiffs applied to berth their inflatable boat on two separate occasions. Defendant claims that in both instances, the applications were reviewed and voted on and after consideration were both denied. In addition, on April 11, 2006, plaintiffs were given the opportunity to attend a board meeting to discuss their application with the Board. An affidavit of John Honkanen, the Commodore of SBYC, was submitted in opposition. In his affidavit, Mr. Honkanen states that this is the first time a member has sought to permanently berth an inflatable dinghy at the Club. He further states that SBYC and its Board of Governors operates under a Constitution, by-laws and mariana rules, and cites to certain provisions including paragraph 13 which reads as follows:

The Marina Committee shall recommend to the Board of Governors the rejection of any application for a berth or the termination of any contract for a berth when in the opinion of the Marian Committee the rules and regulations for the marina have been violated and/or questions of safety, marina navigation hazard, or Club interests are involved.

The defendant contends that Board of Governors made its decision to deny plaintiffs' application on the basis of safety for all members of SBYC and a decision to allow plaintiffs to berth their

club.

In further support of its motion to dismiss and in opposition to plaintiffs' motion, defendant argues that the complaint was brought outside the applicable statute of limitations for an Article 78 proceeding, that the plaintiffs fail to state a cause of action and that plaintiffs have failed to meet the burden necessary to obtain a preliminary injunction.

Turning first to plaintiffs' order to show cause. First, plaintiffs seek an order permitting them to immediately berth their Zodiac boat in the Slip and to enjoin defendant from taking any action to prohibit plaintiffs from doing so. A party seeking the drastic remedy of a preliminary injunction must establish a clear right to that relief under the law and the undisputed facts upon the moving papers. The burden of proof is on the movant to demonstrate a likelihood of success on the merits, the prospect of irreparable injury if the relief is withheld, and a balancing of the equities in the movant's favor (see, **Gagnon Bus Co., Inc. v Vallo Transp. Ltd.**, 13 AD3d 334, 335 [and cases cited therein]). The purpose of a preliminary injunction is to maintain the status quo pending determination of the action (see, **City of Long Beach v Sterling Am. Capital, LLC**, 40 AD3d 902). Here plaintiffs seek to change the status quo by seeking an injunction to allow them to berth their boat after a denial by SBYC. They are seeking a mandatory injunction, which is used to compel the performance of an act. However, this a drastic remedy that is rarely granted. Mandatory injunctions are not favored and should not be granted, absent extraordinary or unique circumstances, when the status quo will be disturbed and the plaintiff will receive the ultimate relief sought pendente lite (see, **Matos v City of New York**, 21 AD3d 936, 937; **SHS Baisley, LLC v Res Land, Inc.**, 18 AD3d 727, 728; **Rosa Hair Stylists v Jaber Food Corp.**, 218 AD2d 793). The court finds that the plaintiffs' allegations are insufficient to establish entitlement to a preliminary mandatory injunction and plaintiffs' request is denied.

The plaintiffs also move for a writ of mandamus pursuant to **CPLR §7804**. Mandamus may be used to compel the performance of an action, required to be done by provision of law, when the act sought to be compelled is ministerial, nondiscretionary and nonjudgmental, and is premised upon specific statutory authority mandating performance in a specified manner (see, **Matter of Bonanno v Town Board of the Town of Babylon**, 148 AD2d 532). An order in the nature of mandamus lies only when it is established that the petitioner has a clear legal right he is entitled to enforce and that a ministerial officer, whose duty it is to enforce the right or otherwise act in furtherance thereof, has refused to perform his duty (see, **Matter of Sullivan v Siebert**, 70 AD2d 975; see also, **Matter of Myron v Nelson**, 259 AD2d 549). It is used to enforce an administrative act required

to be performed by law and involving no exercise of discretion (see, **Matter of Hamptons Hosp. & Med. Center v Moore**, 52 NY2d 88, 96). A body can be directed to act, but not how to act, in a manner as to which it has the right to exercise its judgment (see, **Matter of Bonanno v Town Board of the Town of Babylon**, supra at 533).

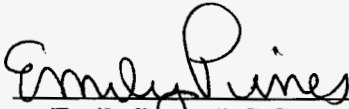
Plaintiffs seek a judgment directing SBYC to permit them to berth their inflatable boat in the Slip which SBYC determined to be a safety hazard and against the best interest of the club. Such relief is clearly not ministerial, nondiscretionary, and nonjudgmental. Accordingly, mandamus to compel is not an appropriate remedy, and plaintiffs' request is therefor denied.

The Court now turns its attention to defendant's motion to dismiss the complaint. When deciding a motion to dismiss, pursuant to CPLR §3211 (a) (7), the court is to liberally construe the complaint, accept the alleged facts as true, give the plaintiff the benefit of every possible favorable inference, and determine only whether the alleged facts fit within any cognizable legal theory. The criterion is whether the proponent of the pleading has a cause of action, not whether he has stated one (see, **Leon v Martinez**, 84 NY2d 83 and **Guggenheimer v Ginzburg**, 43 NY2d 268). Under CPLR §3211 (a) (1), dismissal is warranted only if the documentary evidence submitted, utterly refutes the plaintiff's factual allegations, conclusively establishing a defense to the asserted claims as a matter of law (see, **Goshen v Mut. Life Ins. Co.**, 98 NY2d 314, 326; **Leon v Martinez**, supra at 88). Furthermore, where a private club or association hears and decides an internal dispute, the courts will not review the determination unless there is a showing that the hearing was in bad faith or basically unfair or that the determination was fraudulent or was utterly unsupported by any evidence (see, **Bernstein v The Players**, 120 Misc2d 998).

In reviewing the record, the court finds that the defendant acting through its duly elected board of governors, complied with the by-laws, constitution of its membership and with marina rules in deciding to deny plaintiffs' application. The plaintiffs have failed to prove that the decision by SBYC, was arbitrary or capricious, nor have they set forth any fraudulent acts of the defendant. The documentary evidence currently before the court supports dismissal of this action. Accordingly, the complaint is dismissed.

This constitutes the **DECISION** and **ORDER** of the Court.

DATED: October 18, 2007

  
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Emily Pines J. S.C.