

Joseph v Greens Golf Club LLC

2007 NY Slip Op 33720(U)

November 15, 2007

Supreme Court, Suffolk County

Docket Number: 0025944/2007

Judge: Emily Pines

Republished from New York State Unified Court System's E-Courts Service.
Search E-Courts (<http://www.nycourts.gov/ecourts>) for any additional information on this case.

This opinion is uncorrected and not selected for official publication.

SUPREME COURT - STATE OF NEW YORK
COMMERCIAL DIVISION
TRIAL TERM, PART 46 SUFFOLK COUNTY

PRESENT: Hon. Emily Pines

ALAN H. JOSEPH and ADELE JOSEPH,

Plaintiffs,

-against-

GREENS GOLF CLUB LLC d/b/a THE GREENS AT
HALF HOLLOW and THE GREENS GOLF CLUB,

Defendants.

MOTION DATE: 9/27/07
SUBMITTED: 10/11/07
MOTION NO.: 001 - Mot D, RRH
002 - Mot D, RRH

LoTURCO & MARTIN
Attorneys for Plaintiffs
434 New York Avenue
Huntington, New York 11743

ROSENBERG CALICA & BIRNEY LLP
Attorneys for Defendants
100 Garden City Plaza, Suite 408
Garden City, New York 11530-3200

Plaintiffs submitted this Order to Show Cause seeking a preliminary injunction, ordering defendants to grant plaintiffs, "all rights and privileges of golf membership". On September 4, 2007 this Court ordered that pending the determination of this motion, defendants shall reserve a golf club membership for plaintiffs, should this Court ultimately decide this case in plaintiffs' favor.

Defendants submitted opposition to the Order to Show Cause and a Cross-motion seeking Summary Judgement dismissing the complaint and declaring and adjudging that the plaintiffs' license to use the defendant's golf club was duly terminated as a matter of law.

Plaintiffs contend that on or about August 29, 2001 they entered into a contract to purchase a residence in the development known as The Greens at Half Hollow (the "Greens"). On or about May 2, 2003 the plaintiffs applied for membership with The Greens Golf Club LLC (the "Club"), paid the required \$20,000.00 deposit and were accepted as Club members. The plaintiffs remained members of the Club until they received defendants' July 24, 2007 letter informing them that their golf club account was in gross arrears for the past 18 months and that for a variety of reasons,

they were terminating plaintiffs' golf membership effective July 31, 2007. The letter further states that their \$20,000.00 membership fees will be returned within 60 days pursuant to their membership contract. Plaintiffs argue that although they disputed certain charges billed to their account, their Golf Membership fees were paid at all times and the defendants had no reason or contractual right to terminate their membership.

Defendants, in their opposition and in their cross-motion for Summary Judgment argue that the Club was within its rights to terminate the license given to the plaintiffs. Defendants argue that plaintiffs failure to timely pay various fees, their ongoing disputes with the Golf Club and reported misbehavior in violation of the rules on the golf course warranted the Club's decision not to renew plaintiffs' license beyond July 31, 2007. Defendants cite certain sections of the Offering Plan for the Greens which state that the Golf Club is privately owned and ownership in the Greens does not guaranty a golf membership in the Club. The defendants argue that the license was terminable at any time depending on the needs of the club and there were no guaranties that the plaintiffs would have a perpetual use of the Club. Defendants contend that plaintiffs' motion for a preliminary injunction should be denied and that they should be granted summary judgment dismissing the complaint in its entirety.

Turning first to plaintiffs' motion for a preliminary injunction. 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). A mandatory injunction, which is used to compel the performance of an act, is 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).

Plaintiffs seek an injunction granting them the rights and privileges of golf membership pursuant to a license agreement dated May 2, 2003. This agreement does not offer any definite term for which the license agreement is in effect, but it does contain language that the License is conditioned on and subject to

the Applicant's continuing compliance with club rules and regulations. The plaintiffs argue that they were always in full compliance with the club rules. Furthermore, the rules and regulations of the club state, in relevant portion, that if there is any indebtedness to the club that is considered delinquent, a certified letter shall be sent to the member advising the member of the delinquency. Upon receipt of such letter, the member has ten days to pay the amount including all late charges or the member will be subject to suspension. Plaintiffs claim that the only certified letter they received was the July 24, 2007 letter terminating their membership. Plaintiffs allege that they will be irreparably harmed if they are not granted the preliminary injunction. They argue that their reputations in the community have been damaged and that a preliminary injunction is the only way to prevent future damage.

Defendants argue that as a result of plaintiffs' ongoing disputes with the Golf Club and reports of misbehavior and violation of the rules of the golf course by the plaintiffs, the Club decided to terminate their license. The defendants claim that the duration of the license agreement is indefinite and as such, makes the agreement terminable at will. The defendants further claim that since plaintiffs' membership was terminated on July 31, 2007, the granting of an injunction would change the status quo and absent the showing of extraordinary circumstances, the plaintiffs are not entitled to this relief.

The court finds that the plaintiffs' allegations are insufficient to establish entitlement to a preliminary mandatory injunction. Since the record reveals many unresolved issues regarding whether the plaintiffs complied with the rules and regulations of the Club, it cannot be determined whether there is a likelihood that the plaintiffs will succeed on the merits (see, **Rosa Hair Stylists v Jaber Food Corp.**, supra at 794). Moreover, the plaintiffs have failed to meet their burden of showing that they would suffer irreparable injury absent the granting of this preliminary injunction. The irreparable harm must be shown by the moving party to be imminent, not remote or speculative (see, **Golden v Steam Heat, Inc.**, 216 AD2d 440, 442). However, for the salutary purpose of preserving the status quo *pendente lite*, since the record reveals that the Club has only 500 memberships available and it is actively seeking new members to fill open memberships, the Court continues its order requiring defendants to continue to reserve a Golf Club membership for the plaintiffs, until the final adjudication of this matter.

Defendants have likewise failed to establish entitlement to summary judgment. Summary judgment is warranted when there are no issues of fact to be resolved by the trier of fact (see, **Hartford Accident & Indemnity Co. v Wesolowski**, 33 NY2d 169, 172;

Sillman v Twentieth Century Fox Film Corp., 3 NY2d 395, 404). The proponent of a summary judgment motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to demonstrate the absence of any material issue of fact (see, **Winegrad v New York Univ. Med. Center**, 64 NY2d 851, 853; **Zuckerman v City of New York**, 49 NY2d 557, 562; **Sillman v Twentieth Century Fox Film Corp.**, *supra* at 404). To defeat the motion, the opponent must present evidentiary facts sufficient to raise a triable issue of fact (see, **Freedman v Chemical Constr. Co.**, 43 NY2d 260, 264).

Courts have held that "A cardinal principle governing the construction of contracts is that the entire contract must be considered and, as between possible interpretations of an ambiguous term, that will be chosen which best accords with the sense of the remainder of the contract" (see, **Metropolitan Life Insurance Company v. Noble Lowndes International Inc.** 84 NY2d 430; see also, **Prime Realty Holding Co. v Station Plaza Company**, 122 A2d 141). Furthermore, a court will endeavor to give the contract construction, most equitable to both parties (see, **Metropolitan Life Insurance Company v. Noble Lowndes International Inc.** 84 NY2d 430).

Upon review of the record, the Court finds that the language in the contract regarding the duration of the licensing agreement and the circumstances upon which the license will continue, is ambiguous. The plaintiffs completed their application in May 2003 and have remained members of the golf club up until July 2007 without any further action on their part, this raising an argument that the parties' intention was to continue the licensing agreement from year to year, subject to the applicant's continuing compliance with the Club's rules and regulations. In addition, the issue of whether or not the plaintiffs complied with the rules and regulations of the Club, remains an issue of fact in this matter warranting denial of the defendants' motion for summary judgment. Therefore it is

ORDERED that the defendants' motion for summary judgment is denied; and it is further

ORDERED that the plaintiffs' motion for a preliminary injunction is denied; and it is further

ORDERED that defendants shall set aside a membership for the plaintiffs' should this Court ultimately find for the plaintiffs; and it is further

ORDERED that this action is referred to a conference which shall be held on December 12, 2007 at 12 noon, Supreme

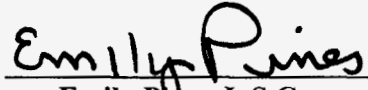
Index No. 25944-07

Page 5

Court, Courtroom 18, Arthur M. Cromarty Criminal Court Building,
210 Center Drive, Riverhead, New York for the purpose of setting a
hearing date.

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

DATED: November 15, 2007



Emily Pines J. S.C.