

Dune Deck Owners Corp. v J.J.&P. Assoc. Corp.
2008 NY Slip Op 31676(U)
June 17, 2008
Supreme Court, Suffolk County
Docket Number: 0014938/2003
Judge: Gary J. Weber
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SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 6 - SUFFOLK COUNTY

P R E S E N T:

<p>Hon. <u>Gary J. Weber</u> Acting Justice of the Supreme Court</p> <hr style="border: 0.5px solid black;"/> <p>DUNE DECK OWNERS CORP. PAUL DAVIDSON, President of Dune Deck Owners Corp. and LOUIS D. LEVINSON, individually and Vice President of Dune Deck Owners Corp.,</p> <p style="text-align: right;">Plaintiff(s),</p> <p style="text-align: center;">-against-</p> <p>J.J.&P. ASSOCIATES CORP. AND MYLENE LIGGETT,</p> <p style="text-align: right;">Defendant(s).</p> <hr style="border: 0.5px solid black;"/>	<p>MOTION DATE Motion Seq. #</p> <p>BARBARA A. RASMUSSEN, ESQ. Attorneys for Plaintiff 12 Oak Street, Suite 2 P.O. Box 883 Westhampton Beach, New York 11978</p> <p>MARTIN S. STREIT, ESQ. Attorney for Defendant 386 Park Avenue South, Suite 1914 New York, New York 10016</p> <p>TIERNEY & TIERNEY, ESQS. By: GEORGE W. CLARKE, ESQ. Attorney for Defendant 409 Route 112, P.O. Box 995 Port Jefferson Station, New York 11776</p>
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This was a non-jury trial before the undersigned on April 18, April 22, May 5th and May 7th, 2008. Plaintiff was given until May 26, 2008 to submit additional materials and the defendant was given until June 3, 2008. The Court has read and considered "Plaintiff's Reply Brief" dated May 23, 2008 as well as Defendant's "Trial Memorandum of Law" and Defendant's "Reply Brief" dated May 12, 2004(sic) and June 3, 2004(sic) respectively.

General Background

The Dune Deck Owners Corp. (hereinafter "Dune Deck") is a New York Domestic Corporation whose shareholders are the tenants of the Dune Deck Cooperative's property located at 379 Dune Road, Westhampton Beach, New York.

Pursuant to a certain contract of sale dated October 1st (1995) (Plaintiff's exhibit 16) and a certain proprietary lease dated April 2, 1996 between JJ & P Corporation and Mylene Liggett (hereinafter "Liggett") (Plaintiff's Exhibit 17) JJ and P Corporation (a New York Domestic Corporation) became the holder of 889 shares of stock in the Dune Deck Corporative Association and a tenant of Unit #615 of the cooperative, pursuant to the proprietary lease.

The proprietary lease indicates that Mylene Liggett executed the lease in her corporate capacity as President of JJ& P Corp. on October 1, 1996.

Dune Deck has named both the corporation and Ms. Mylene Liggett as defendants in this lawsuit and it appears that she is the sole stockholder and officer of the JJ&P Corporation. The parties, throughout the course of this litigation

and trial have treated Mylene Liggett and JJ& P Corporation interchangeably and as alter egos. That being so, the Court will do likewise and shall refer to both defendants Mylene Liggett and JJ&P Associates Corp. As "Liggett".

This matter was before Hon. Elizabeth H. Emerson of this Court and the Appellate Division, Second Department, which remanded it here by way of a decision and order dated November 14, 2006, modifying so much of Justice Emerson's order dated April 15, 2006 in so far as it granted plaintiff Dune Deck's motion for summary judgment cancelling Defendant's stock certificates and her proprietary lease.

The court also notes that Plaintiff's Exhibits 16 (the contract) and 17 (the proprietary lease) were not before either Justice Emerson or the Appellate Division, Second Department during the prior proceedings. Apparently, these documents were for a time either lost or misplaced during the course of another, earlier proceeding in the Civil Court of the City of New York as between the parties and have been since recovered from an attorney in New York City.

As was testified at trial, without dispute, the Dune Deck Cooperative itself has gone under much financial stress from its inception. This has been, in part, caused by the fact that the facility itself is old and was built with the idea in mind that the use of the premises would be seasonal in nature. Building and fire code disputes with the Village of Westhampton Beach and the Suffolk County Health Department, together with storm damage, all took their toll on the Dune Deck - financially and otherwise.

In November of 1993 Dune Deck filed a petition in bankruptcy and, in keeping with the plan that was filed with the Bankruptcy Court, the contract of sale that Liggett signed (plaintiff's Exhibit 17) contained the following language:

"Section 3.2 - Purchaser Acknowledgment

The representatives and warranties of Seller are limited to the express statements set forth in this Contract. No representations survive. However, Purchaser acknowledges that Seller has informed Purchaser that:

- (i) maintenance charges will be increasing in the immediate future by an amount which is currently undetermined, but believed to be at least 10% of current maintenance charges and Purchaser will be responsible for same, commencing October 1, 1995;
- (ii) no owner will be permitted to utilize his or her Unit at any time maintenance charges or assessments are outstanding;
- (iii) Units are only available for seasonal use only, approximately April 25 - October 15 of any year;
- (iv) All units will be part of a rental program to be controlled by the Board of Directors unless the Unit Owner, by March 1st of each year, notifies the Board of his/her desire to retain the Unit for personal use and pays, by March 1, all maintenance to come due for the months of March, May, June, July, August and September and pays April maintenance by the 1st of April;
- (v) if the Unit Owner does not act affirmatively to remove his/her Unit from the rental program, the Unit will be included therein, subjecting the Unit and Unit Owner to very strict rules and procedures which govern the Unit Owner's ability to both use and/or rent his/her Unit; and
- (vi) Purchaser's acquisition of the Unit and Purchaser's continuing ownership thereof is subject and subordinate to the Reorganization Plan including, without limitation, certain provisions thereof which might necessitate the termination of the Proprietary Lease and cancellation of the Shares without compensation and require Purchaser to vacate the Unit on 20 days notice. Purchaser acknowledges receipt of a copy of the Reorganization Plan.

NOTWITHSTANDING THE FOREGOING, PURCHASER IS NOT RELYING ON THE REPRESENTATIONS

OF SELLER IN ENTERING INTO THIS CONTRACT OR ACQUIRING THE UNIT. PURCHASER HAS BEEN AFFORDED EVERY OPPORTUNITY TO MAKE ANY INVESTIGATION PURCHASER ELECTED TO HAVE MADE INCLUDING, WITHOUT LIMITATION, ANY INVESTIGATION CONCERNING THE RENTAL PROGRAM AND A THOROUGH REVIEW OF THE REORGANIZATION PLAN. PURCHASER'S EXECUTION AND DELIVERY OF THIS CONTRACT CONSTITUTES ABSOLUTE PROOF THAT PURCHASER HAS EITHER BEEN SATISFIED WITH THE RESULTS OF SUCH INVESTIGATIONS OR VOLUNTARILY KNOWINGLY WAIVED THE MAKING OF SUCH INVESTIGATIONS."

The Proprietary Lease (Plaintiff's Exhibit 16) contains the following provisions:

12. The Lessee will pay the rent to the Lessor upon the terms and at the times herein provided, without any deduction on account of any set-off or claim which the Lessee may have against the Lessor, and if the Lessee shall fail to pay any installment of rent promptly, the Lessee shall pay interest thereon at the maximum legal rate from the date when such installment shall have become due to the date of the payment thereof, and such interest shall be deemed additional rent hereunder.
28. If the Lessee shall at any time be in default hereunder and the Lessor shall incur any expense (whether paid or not) in performing acts which the Lessee is required to perform, or in instituting any action or proceeding based on such default, or defending, or asserting a counterclaim in, any action or proceeding brought by the Lessee, the expense thereof to the Lessor, including reasonable attorneys' fees and disbursements, shall be paid by the Lessee to the Lessor, on demand, as additional rent.
31. If upon, or at any time after the happening of any of the events mentioned in subdivisions (a) & (j) to be inclusive of this Paragraph 31, the Lessor shall give to the Lessee a notice stating that the term hereof will expire on a date at least five days thereafter, the term of this lease shall expire on the date so fixed in such notice as fully and completely as if it were the date herein definitely fixed for the expiration of the term, and all right, title and interest of the Lessee hereunder shall thereupon wholly cease and expire, and the Lessee shall thereupon quit and surrender the unit to the Lessor, it being the intention of the parties hereto to create hereby a conditional limitation, and thereupon the Lessor shall have the right to re-enter the unit and to remove all persons and personal property therefrom, either by summary dispossession proceedings, or by any suitable action or proceeding at law or in equity, or by force or otherwise, and to re-possess the unit in its former estate as if this lease had not been made, and no liability whatsoever shall attach to the Lessor by reason of the exercise of the right of re-entry, repossession and removal herein granted and reserved;
- ... [the above paragraph to take effect in the event that the below stated condition should arise]
- (d) If the Lessee shall be in default for a period of one month in the payment of any rent or additional rent or of any installment thereof and shall fail to cure such default within ten days after written notice from the lessor;
32. (a) In the event the Lessor resumes possession of the unit, either by summary proceedings, action of ejectment or otherwise, because of default by the Lessee in the payment of any rent or additional rent due hereunder, or on the expiration of the term pursuant to a notice given as provided in Paragraph 31 hereof upon the happening of any event specified in subsections (a) to (f) inclusive of Paragraph 31, the Lessee shall continue to remain liable for payment of a sum equal to the rent which would have become due hereunder and shall pay the same in installments at the time such rent would be due hereunder. No suit brought to recover any installment of such rent or additional rent shall prejudice the right of the Lessor to recover any subsequent installment. After resuming possession, the Lessor may, at its option, from time to time (i) relet the unit for its own account or (ii) relet the unit as the agent of the Lessee, in the name of the Lessee or in its own name, for a term

or terms which may be less than or greater than the period which would otherwise have constituted the balance of the term of this lease, and may grant concession or free rent, in its discretion. Any reletting of the unit shall be deemed for the account of the Lessee, unless within ten days after such reletting the Lessor shall notify the Lessee that the premises have been relet for the Lessor's own account. The fact that the Lessor may have relet the unit as agent for the Lessee shall not prevent the Lessor from thereafter notifying the Lessee that it proposes to relet the unit for its own account. If the Lessor relets the unit as agent for the Lessee, it shall, after reimbursing itself for its expenses in connection therewith, including leasing commissions and a reasonable amount for attorney's fees and expenses and decorations, alterations and repairs in and to the unit, apply the remaining avails of such reletting against the Lessee's continuing obligations hereunder. There shall be final accounting between the Lessor and the Lessee. . . .

© Upon the termination of this lease under the provisions of subdivisions (a) to (j) inclusive of Paragraph 31, the Lessee shall surrender to the corporation the certificate for the shares of the corporation owned by the Lessee to which this lease is appurtenant. Whether or not said certificate is surrendered, the Lessor may issue a new proprietary lease for the unit and issue a new certificate for the shares of the Lessor owned by the Lessee and allocated to the unit when a purchaser therefor is obtained, provided that the issuance of such shares and such lease to such purchaser is authorized by a resolution of the Directors, or by writing signed by a majority of the Directors or by lessees owning, of record, at least a majority of the shares of the Lessor accompanying proprietary leases than in force. Upon such issuance the certificate owned or held by the Lessee shall be automatically cancelled and rendered null and void. The Lessor shall apply the proceeds received for the issuance of such shares towards the payment of the Lessee's indebtedness hereunder, including interest, attorney's fees, and other expenses incurred by the Lessor, and if the proceeds are sufficient to pay the same, the Lessor shall pay over any surplus to the Lessee. . . .

The Facts

A

The credibility of the Witnesses

The principal fact witnesses were Mylene Liggett for the defendants and Louis Levinson on behalf of plaintiff Dune Deck.

Essentially, Ms. Liggett testified to the effect that she had never received a key to her apartment at the Dune Deck premises and that, as a result of not having a key and the inclusion of her unit in the rental program described in the contract of sale (Exhibit #17) and paragraph #32a of the Proprietary Lease (Exhibit #16), she was unfairly deprived of the use of her unit.

Also, Ms. Liggett was of the firm belief that since no accounting has ever been made of monies due her by Dune Deck as to Dune Deck's rental of her unit to third parties over the years (an action for an accounting is pending under Index No. 021211-2007) and, in light of the present litigation, as well as the alleged deprivation of possession and use of her unit by the Dune Deck pursuant to Section 32 of the proprietary lease above described, she should not be required to pay any maintenance until a resolution of these issues is had to her satisfaction.

Furthermore, says she, Liggett was also denied access to her unit from time to time due to storm damage which had not been repaired and seasonal closings of the premises.

The Court finds that the testimony of the witness, Mylene Liggett, was not credible in at least one material respect.

Liggett denied that she had received a notice of default dated May 12, 2003 from Dune Deck directed to her New York City address (Plaintiff's Exhibit #8). Yet, Dune Deck received a letter from attorney Lionel Alan Marks, Esq. dated May 16, 2003 (Defendant's Exhibit 1) in which Mr. Marks took issue with Dune Deck's position along roughly the same lines which were above attributed to Ms. Liggett as per her testimony in court and otherwise.

Under the circumstances, it is hard to seek how Attorney Marks could have been responding in this manner unless this situation was brought to his attention by Liggett who, to this day, swears she never received the letter from Dune Deck to which Mr. Marks was obviously responding.

Louis Levinson (hereinafter Levinson) testified to the effect that during the relevant time periods he was an accountant and a Director of Dune Deck.

It was Levinson who caused two mailings to be made to Liggett, each addressed to her at two separate locations - the first at the Dune Deck premises and the second at a New York City address at 530 East 76th Street, Apt. 20G.

Copies of the two notices Levinson testified as having mailed were marked as portions of Plaintiff's Exhibit Four and stated the following:

Notice #1

Dune Deck Owners Corp.
C/O Louis D. Levinson 49 Pickwick Road Manhasset NY 11030

May 12, 2003

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

JJ&P Corp.
Ms. Mylene Liggett
Dune Deck - Unit 615
379 Dune Road
Westhampton Beach, NY 11978

JJ&P Corp.
Ms. Mylene Liggett
530 East 76th Street
New York, NY 10021

Re: Unit 615
Dune Deck
379 Dune Road
Westhampton Beach, New York
(the "Premises")

Dear Mr. Liggett:

PLEASE TAKE NOTICE that you are in default and you are violating a substantial obligation of your Proprietary Lease, and you are justly indebted to Dune Deck Owners Corp. ("Landlord"), by virtue of your failure to make payment of the rent, including maintenance and the late charges as follows:

Maintenance:	April 1, 2003	\$1,209.04
	Late Fees April	\$ 711.20
	May 1, 2003	\$1,209.04
	Late Fees May	\$ 711.20
Total Due:		\$3,840.48

PLEASE TAKE FURTHER NOTICE that you are required to cure the breach and pay to the Landlord the rent, including maintenance and late charges on or before ten (10) days from the date of this notice (i.e. - May 22, 2003) or surrender possession of the Premises to the Landlord.

Upon your failure to pay the rent, including maintenance and late charges the Landlord will commence a dispossess proceeding against you and remove you from the premises, and the Landlord will hold you liable for all damages, including court costs, attorneys fees and disbursements.

Very truly yours,

DUNE DECK OWNERS CORP.

By: _____

Notice #2

DUNE DECK OWNERS CORP.
C/O Louis D. Levinson 49 Pickwick Road Manhasset NY 11030

May 23, 2008

CERTIFIED - RETURN RECEIPT REQUESTED

JJ&p Corp.
Ms. Mylene Liggett
Dune Deck - Unit 615
379 Dune Road
Westhampton Beach, NY 11978

JJ&P Corp.
Ms. Mylene Liggett
530 East 76th Street 20G
New York, NY 10021

Re: Unit 615
Dune Deck
379 Dune Road
Westhampton Beach, New York
(the "Premises")

Dear Ms. Liggett:

PLEASE TAKE NOTICE that the undersigned Landlord hereby terminates as of May 28, 2003, your proprietary lease and tenancy and the tenancy of all those claiming under you with respect to the premises: Unit 615, Dune Deck, 379 Dune Road, Westhampton Beach, New York, because you have failed to cure your default pursuant to the Notice of Default dated May 12, 2003. You are required to vacate and surrender the Premises on or before May 28, 2003. If you fail to vacate and surrender the Premises, the Landlord will institute proceedings to evict you.

Very truly yours,

DUNE DECK OWNERS CORP.

By: _____
Louis D. Levinson
Director

Levinson testified that, based upon Liggett's default pursuant to these notices, by resolution of the Board of Directors of the Dune Deck under date of May 9, 2006 (Plaintiff's Exhibit 5), the proprietary lease of Liggett was terminated and the 889 shares of stock were re-issued to the corporation.

The Court finds Levinson's testimony to have been credible in all material respects.

B
The Applicable Documents and Related Conclusions
To be Drawn Thereby

The rights and remedies of the parties are governed by the contract of sale (Plaintiff's Exhibit 16) and the proprietary lease (Plaintiff's Exhibit 17).

Defendant did, in fact, actually receive the notices of her delinquencies together with the warnings that her proprietary lease was about to be and, later, was, terminated. (Letters dated May 12, 2003 and May 23, 2003, (part of Plaintiff's Exhibit 4). In this regard, as above analyzed, the testimony of Levinson is credible and the testimony of Liggett to the contrary is not.

Analysis
A
The Default

Liggett has been in default of payment pursuant to her obligations under the proprietary lease ever since April of 2003.

Pursuant to paragraph 12 of the proprietary lease, Liggett may not, in these proceedings at least, make a counter claim for an accounting of monies that may be due her as a result of rental income received by Dune Deck from the rent of her unit. Indeed, the Appellate Division Second Department so held in its decision and order dated November 14, 2006.

On the other hand, at no place in the letters of May 12, 2003 or May 23, 2003 is any mention made that Liggett's stock will simply be signed over to the Dune Deck by order of the Board of Directors. The letters do warn of a possible summary proceeding to evict the defendants, but such a proceeding was apparently never commenced.

B
The Cancellation of the Stock

As far as the cancellation of the stock is concerned, the Court also notes that the resolution of the Board of Dune Deck purportedly authorizing this is dated May 9, 2006, approximately three years after the notices of default (Plaintiff's Exhibit 5).

Even more importantly, any remedy by the Dune Deck Board for default in payment of rent, under these circumstances, should be "commercially reasonable". See *Dougherty v. 425 Development Associates*, 93 A.D.2d 438, 462 N.Y.S.2d 851 (A.D. 1st Dept. 1983). See also, generally, U.C.C. Article 9.

By simply cancelling Liggetts stock without input by anyone but the members of the Dune Deck Board of Directors, the Board essentially doomed Liggett to receive nothing for the proprietary lease or her stock.

This, manifestly, is not a commercially reasonable remedy (see U.C.C. Article 9).

C
The Rent Arrearages

Plaintiff's complaint contains a provision praying for such other and further relief as to the Court may seem just and proper and the Court, in any case, may amend the pleadings to conform the pleadings to the proof.

Defendant owes plaintiff the sum of \$119,054.86 for unpaid rent (maintenance and late charges) from April 1, 2003 to June 1, 2008. In its decision and order of November 14, 2006 the Appellate Division, Second Department specifically authorized an award to the Dune Deck of the late charges as requested by Dune Deck.

D
Attorneys Fees

Plaintiff seeks attorneys fees pursuant to paragraph 28 of the proprietary lease.

In support of this claim counsel has submitted receipted legal bills totaling the sum of \$51,047.13.

Based upon her billing rates in this matter, Petitioner's Attorney claims that the value of services rendered is the sum \$51,047.13, all of which has already been paid.

In response, Defendant Liggett contends that the fee far exceeds the reasonable value of the services rendered, and that, in any event, Plaintiff is not entitled to any legal fees.

Where, as in this case, an attorney is engaged under a contract for a definite purpose and not under a general retainer, he or she is entitled to recover on *quantum meruit* the fair and reasonable value of the services rendered. Having presented the issue to the undersigned for determination, the Court must be guided by the longstanding principles recognized by *Matter of Freeman*, 34 NY2d 1 and *Matter of Potts*, 123 Misc 346, *aff'd* 213 AD 59, *aff'd* 241 NY 593.

The Court is not necessarily bound by the fact that Plaintiff's attorney has already been paid any specific sum of money for attorney's fees by Plaintiff, since Plaintiff is, effectively, demanding that the Defendant reimburse Plaintiff for any fees that might have been paid or will be paid.

What is determinative is not the amount that Dune Deck may have paid or will pay for legal fees but what is a reasonable legal fee. (See *Nitti v. Credit Bureau of Rochester*, 375 N.Y.S.2d 817 (Supreme Court Monroe County 1975), *citing with approval Cape Cod Food Products v. National Cranberry Association*, 119 F. Supp. 242)

Thus, Plaintiff has the burden of establishing both the reasonableness and the value of services rendered (see *Matter of Potts, supra*). Reasonableness is determined on a *quantum meruit* basis using generally recognized criteria, namely, the time spent in rendering the legal services, the nature of those services, the difficulties encountered, the worth of the action, the results obtained, the amount involved, and the professional standing of counsel (see *Matter of Freeman, supra; Matter of Potts, supra*). When determining reasonableness of fees, detailed contemporaneous time records are an important vehicle through which counsel validates the time claimed (see *Matter of Kelly, 187 AD2d 718*), and in the absence of same it is left to the undersigned's discretion to determine what would constitute a reasonable amount of time to perform the services (see *Matter of Phelan, 173 AD2d 621*). The time spent by counsel, however, is only one factor to be considered in determining reasonable compensation (see *Matter of Kentana, 170 Misc 663*), often serving as an appropriate starting point (see *Estate of Gillett, 139 Misc2d 188, 527 NYS2d 690*).

The Court finds that the time expended by Plaintiff's attorney in protecting the interests of the Plaintiff exceeds that which should reasonably be expended in the performance of same. Having due regard for all the elements relevant to the fixing of legal fees (see *Matter of Freeman, supra; Matter of Potts, supra*), and being constrained by the proof submitted in support of the requested fee, as well as the value of entire case, the court fixes and determines the fair value of counsel's services to be \$35,000.00.

Conclusion

It is obvious that the Defendant Liggett took it onto herself to refuse to pay maintenance or rent pursuant to the proprietary lease on a regular basis as required until such time as a number of difficulties and issues as between herself and Dune Deck were resolved to her satisfaction.

This is not how the law pertaining to cooperatives is structured and, for her actions or non actions, in these regards, she owes not only maintenance or rent to the Dune Deck but late charges, reasonable legal fees for Dune Deck's attorneys and expenses, as well.

However, this is not to say that Liggett should necessarily lose her proprietary lease and stock, at least at this juncture in the proceedings.

The Court is of the mind that the process the Dune Deck seeks to have this Court validate with respect to the cancellation of Ms. Liggett's stock and proprietary lease is fundamentally flawed because it was not commercially reasonable. Further, the Board of Directors passed a resolution cancelling the stock almost three years after the Board sent notices of default which only mentioned cancellation of the lease and possible summary proceedings but nothing about the forfeiture of the stock.

No doubt the defendant owes a substantial amount in maintenance arrears to the Plaintiff pursuant to the proprietary lease, but the remedy provided in the order to follow should protect the respective rights of the Dune Deck as well as protect the defendant's equity interest in the lease and stock especially if these are worth, as defendant's counsel has urged, the sum of at least \$350,000.00.

Order

IT IS ORDERED, that Plaintiff is awarded the sum of \$119,054.86 as against the defendants as to the first cause of action herein and this sum shall increase monthly after June 1, 2008 as new rent, maintenance and late fees may accrue, and it is further

ORDERED, that Plaintiff is awarded the sum of \$35,000.00 as and for reasonable attorneys fees together with the costs and disbursements of this action as to the Fourth cause of Action herein, and it is further

ORDERED, that the balance of this order shall be of no force effect and plaintiff shall forthwith re-issue the stock and the proprietary lease to the defendants if the sum of \$154,054.86 together with the costs and disbursements of this

action and any other rent, maintenance or late fees accumulating after June 1, 2008 be paid to the Dune Deck by the Defendants no later than 30 days from the service upon defendant's attorney of a copy of this decision and order with notice of entry; and it is further

ORDERED, that so much of Plaintiff's application as is to award Plaintiff possession of the premises known as Unit 615 Dune Deck, 379 Dune Road, Westhampton Beach, New York 11978 and to cancel defendants 889 shares of Dune Road stock is granted subject to the provisions and conditions of this order, and it is further

ORDERED, that in the event that the Defendants shall not pay the sums required as above described to the Plaintiff's attorney within thirty (30) days of service upon Defendant's attorneys of a copy of this memorandum decision and order, Keith O'Halloran, Esq. of 32 Mill Road, Westhampton Beach, New York 11978 631-998-3601 is conditionally appointed to sell the 889 shares of Dune Deck stock and the proprietary lease at public auction on the front steps of the Village Hall of the Village of Westhampton Beach, New York 11978 on any date convenient to him that is later than 30 days after service of a copy of this decision and order with notice of entry by plaintiff's attorney upon defendant's attorney; and it is further

ORDERED, that the Referee submit his affidavit of services upon the incoming of his report and he shall be compensated at the rate of \$300.00 per hour; and it is further

ORDERED, that the sale by the said Referee shall be conditioned upon the approval of the prospective purchaser by the Dune Deck Cooperative Board of Directors and, in the event, they should disapprove the prospective purchaser, the premises will be re-advertised for sale; and it is further

ORDERED, that the Plaintiff may become the purchaser at the sale and if the Plaintiff shall become the purchaser at the sale then Plaintiff shall not be required to make any deposit thereon, and that said Referee execute to the purchaser or purchasers on such sale the proprietary lease and a certificate for 889 shares of stock in the Dune Deck Owner's Corp. and that the Referee on receiving the proceeds of such sale forthwith pay therefrom in the following priority, the fees of said Referee at the rate of \$275.00 per hour, the expenses of the sale including advertising, and reimburse to the Plaintiff any sums advanced for these purposes and the sums adjudicated as due the plaintiff as earlier described herein; and it is further

ORDERED, that the Referee cause the sale herein to be advertised in the Suffolk Life newspaper for four consecutive weeks preceding the sale; and it is further

ORDERED, that the Referee deposit any sums held by him on this account into any bank having sufficient F.D.I.C. Insurance to cover same; and it is further

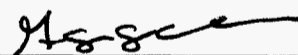
ORDERED, that the Referee file a report with the Court showing the details of the sale with all convenient speed; and it is further

ORDERED, that the defendants shall be liable for the whole deficiency or so much thereof as the Court may determine to be just and equitable of the residue of the debt remaining unsatisfied after a sale of the premises and the application of the proceeds thereof, provided a motion for such a judgment shall be made thirty (30) days of the sale, and the amount thereof is determined and awarded by an order of this Court; and it is further

ORDERED, that the purchaser or purchasers at said sale be let into possession on production of the referee's Bill of Sale; and it is further

ORDERED, that this Memorandum and Order shall constitute the Order of the Court.

Dated: June 17, 2008



Gary J. Weber, Acting J.S.C.