

<b>Brideson v Country Villas, Inc.</b>
2009 NY Slip Op 31809(U)
August 11, 2009
Supreme Court, Richmond County
Docket Number: 102592/06
Judge: Joseph J. Maltese
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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF RICHMOND DCM PART 3**

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**Index No.:102592/06  
Motion No.: 004 & 005**

**JAMES BRIDESON, *and*  
LISA BRIDESON,**

*Plaintiffs*

*against*

**COUNTRY VILLAS, INC.,  
COUNTRY VILLAS ESTATES HOMEOWNERS  
ASSOCIATION, INC.,  
ISLAND CONDO MANAGEMENT CORP.,  
SHOU KEN WONG,  
JOHN RICCIO,  
THERESA RICCIO,  
NELIA THEN, *and*  
“JOHN DOE” OR “JANE DOE” 1 through 5,**

*Defendants*

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**DECISION & ORDER**

**HON. JOSEPH J. MALTESE**

The following items were considered in the review of a motion and cross-motion for summary judgment.

<u>Papers</u>	<u>Numbered</u>
Notice of Motion and Affidavits Annexed	1
Notice of Cross-Motion and Affidavits Annexed	2
Answering Affidavits	3
Replying Affidavits	4
Sur-Reply	5
Sur-Sur Reply	6
Exhibits	Attached to Papers

Plaintiffs James and Lisa Brideson move for partial summary judgment pursuant to the New York Civil Practice Law and Rules (“CPLR”) § 3212 seeking to (1) bar defendants from parking, standing, or leaving any automobiles or placing any property in or around the common roadway in front of the plaintiff’s townhouse and (2) direct defendants Country Villa Estates Homeowners Association, Inc. (“HOA”) and Island Condo Management Corp. (“Island Condo”) to enact a parking policy that would prohibit parking, standing, or leaving any automobiles or placing any property in the subject area. Defendants Shou Ken Wong, Nelia Then, John Riccio,

and Theresa Riccio cross-move for summary judgment seeking to dismiss the plaintiffs' complaint. Plaintiffs' motion and moving defendants' cross-motion for summary judgment are denied in their entirety.

### **Facts**

The plaintiffs are owners of the residential property at 30 Simmons Lane, Staten Island, New York. Defendant Country Villas ("CVI") is the sponsor and developer of Country Villas Estates ("the condominium") and the original grantor/vendor of the subject property. In accordance with the Declaration of Covenants, Restrictions, Charges and Liens ("Declaration"), HOA is responsible for "maintaining the pavement, curbing and . . . removing snow from the Common Areas and maintaining the street lights and water mains . . . and . . . maintain[ing] the Common Open Space Area . . . ." <sup>1</sup> Island Condo is the management company who administers the upkeep of these common areas.

The two front townhouses in Simmons Lane are those of defendants John and Theresa Riccio, at 22 Simmons Lane, and defendant Shou Ken Wong, at 32 Simmons Lane. The Wong townhouse is located on the same side of the alleyway as the plaintiffs' and the Riccio townhouse is on the opposite side of the alleyway. The two rear townhouses in Simmons Lane are those of the plaintiffs and that of the defendant Nelia Then, who resides at 24 Simmons Lane. Then's townhouse is directly across the alleyway from the plaintiffs and adjacent to the Riccio townhouse.

Article III, Section 3, Subsection 1 of the Declaration provides, in part,

Sponsor does hereby establish and create for the benefit of the Association and for all Owners of Units located on the Property the following easements, licenses, right and privileges:

(I) Right of ingress and egress to the nearest public highway over and through all roads, walkways and roadways on the Common Areas, and if there are no roads, walkways or roadways leading from a Home to a public highway, right of ingress and egress to the

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<sup>1</sup> Plaintiff's exhibit F.

nearest public highway over the Common Areas.<sup>2</sup>

### Discussion

A motion for summary judgment must be denied if there are “facts sufficient to require a trial of any issue of fact.”<sup>3</sup> Granting summary judgment is only appropriate where a thorough examination of the merits clearly demonstrates the absence of any triable issues of fact. “Moreover, the parties competing contentions must be viewed in a light most favorable to the party opposing the motion.”<sup>4</sup> Summary judgment should not be granted where there is any doubt as to the existence of a triable issue or where the existence of an issue is arguable.<sup>5</sup> As is relevant, summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law.<sup>6</sup> On a motion for summary judgment, the function of the court is issue finding, and not issue determination.<sup>7</sup> In making such an inquiry, the proof must be scrutinized carefully in the light most favorable to the party opposing the motion.

The plaintiffs’ complaint seeks injunctive and monetary relief from defendants who allegedly interfere with the defendants’ right to ingress and egress to and from their townhouse. In her sworn affidavit, plaintiff Lisa Brideson declared that when two vehicles are parked along both sides of the alleyway, it is impossible for her vehicle to pass between them. She avers to

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<sup>2</sup> *Id.*

<sup>3</sup> CPLR § 3212[b].

<sup>4</sup> *Marine Midland Bank v. Dino & Artie’s Automatic Transmission Co.*, 168 AD2d 610 [2d Dept 1990].

<sup>5</sup> *American Home Assurance Co., v. Amerford International Corp.*, 200 AD2d 472 [1st Dept 1994].

<sup>6</sup> *Rotuba Extruders v. Ceppos.*, 46 NY2d 223 [1978]; *Herrin v. Airborne Freight Corp.*, 301 AD2d 500 [2d Dept 2003].

<sup>7</sup> *Weiner v. Ga-Ro Die Cutting*, 104 AD2d 331 [2d Dept 1984]. *Aff’d* 65 NY2d 732 [1985].

have measured the space in between two parked vehicles and ascertained it to be 66 inches.<sup>8</sup> The presence of one vehicle in the alleyway, Lisa Brideson attests, impedes another vehicle from turning in or out of the driveway.<sup>9</sup> Although the plaintiffs admit that they are occasionally able to access the front of their home, they say that they only have that access when there are no vehicles parked in the front end of the alleyway.<sup>10</sup> The individual defendants deny that their or their tenants' parked vehicles interfere with the plaintiffs' access to their townhouse.<sup>11</sup> They further protest that if successful in their complaint, the plaintiffs would deny the defendants of the benefits of the easement established by the Declaration.

Defendants HOA and Island Condo also defend that they are not responsible for enforcing parking rules and regulations, hence a cause of action cannot be directed towards them. In contrast, the plaintiff points to the Declaration's Section 5.11.6, which vests to the HOA the duty to adopt rules concerning the use of the condominium's common areas, and the personal conduct of the members and their guests. Co-defendants HOA and Island Condo also cite *Levandusky v. One Fifth Avenue Apartment Corp.*, which held that members of a cooperative or a condominium association cannot file a complaint against their board because the business judgment rule forbids any challenges against the board's decision.<sup>12</sup> In their reply, the plaintiffs contend that they do not contest the board's decision, but request that it take action in allowing the plaintiffs to enjoy their easement.

The plaintiffs and moving defendants have failed to demonstrate their prima facie entitlement to judgment as a matter of law. As established by the Declaration, all homeowners have the right to the alleyways leading to their respective homes. It is unclear to what extent the

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<sup>8</sup> Affidavit of plaintiff Lisa Brideson ¶ 4.

<sup>9</sup> *Id.* ¶ 5.

<sup>10</sup> Affidavit of plaintiff James Brideson ¶ 3.

<sup>11</sup> Affidavits of defendants Shou Ken Wong, Nelie Then and John Riccio.

<sup>12</sup> *Levandusky v. One Fifth Avenue Apartment Corp.*, 75 NY2d 530 [1990], citing *Pollitz v. Wabash R.R. Co.*, 207 NY 113 [1912].

plaintiffs are limited from parking in front of their townhouse. There is also a question of fact as to how the sought injunction will deny the defendants of their own right to access their homes. A material issue of fact also remains regarding the nature of HOA's denial to the plaintiffs' request. These multiple issues of fact should be best decided at a trial.

Accordingly, it is hereby:

ORDERED, that the plaintiffs James Brideson and Lisa Brideson's motion for partial summary judgment pursuant to CPLR § 3212 is denied in its entirety; and it is further

ORDERED, that the defendants Shou Ken Wong, Nelia Then, John Riccio, and Theresa Riccio's cross-motion for summary judgment seeking to dismiss plaintiffs' complaint is denied in its entirety; and it is further

ORDERED, that all parties shall return to DCM Part 3 on Wednesday, September 30, 2009 at 9:30am for a Status Conference.

ENTER,

DATED: August 10, 2009

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Joseph J. Maltese  
Justice of the Supreme Court