

**Laker v Association of Prop. Owners of Sleepy
Hollow Lake, Inc.**

2018 NY Slip Op 33997(U)

April 5, 2018

Supreme Court, Greene County

Docket Number: 17-0256

Judge: Raymond J. Elliott, III

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This opinion is uncorrected and not selected for official publication.

At a Term of the Supreme Court, held in and for the County of Greene, in the Village of Catskill, New York, on the 5th day of April, 2018.

PRESENT: HON. RAYMOND J. ELLIOTT, III
Justice

SUPREME COURT
COUNTY OF GREENE STATE OF NEW YORK

ROBERT LAKER, THOMAS MANNING, JOHN ENGLISH, HERB NIEPORENT, DONNA MONROE, YURY KORNITSKY, MICHAEL VINCIGUERRA, NICHOLAS FINKLEMAN, DAVID PERILLI, DIANE PERILLI, ROBIN LYNN WEINTRAUB, AND PAUL ZAAPA,

Plaintiffs,

-against-

DECISION AND ORDER
INDEX NO. 17-0256

THE ASSOCIATION OF PROPERTY OWNERS OF SLEEPY HOLLOW LAKE, INC., AND THE BOARD OF DIRECTORS OF THE ASSOCIATION OF PROPERTY OWNERS OF SLEEPY HOLLOW LAKE, INC.,

Defendants.

APPEARANCES: WILLIAM F. RYAN, JR., ESQ.
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Attorneys for Defendants

DECISION AND ORDER



Marilyn Farrell, County Clerk

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Clerk: LAR

RAYMOND J. ELLIOTT, III J.S.C.

Defendants have filed a motion for an order: granting an undertaking pursuant to CPLR §6312(b) and imposing upon Plaintiffs an undertaking in the amount of \$20,000.00 before the Court's Decision and Order dated January 29, 2018, granting a preliminary injunction becomes effective. Plaintiffs have opposed the motion.

Plaintiffs' have cross-moved for an order: granting the remittance of conditional use permit fees in the amount of \$19,000.00 to those Plaintiffs who paid those fees in 2017 and granting the return of the increased fees paid by those homeowners who are not Plaintiffs but who paid the increased conditional use permit fees. Defendants have opposed the cross-motion.

The Court previously issued a Decision and Order dated January 29, 2018, which denied Defendants' cross-motion to dismiss the complaint in its entirety and granted Plaintiffs' motion for a preliminary injunction.

In its Decision and Order dated January 29, 2018, the Court recognized that CPLR §6312 required the posting of a bond but neither party had provided the Court with sufficient information for making a determination as to the amount of the bond. Thus, the Court scheduled a conference with the parties to address the issue of the amount of the bond in the anticipation that the parties would be able to agree to an amount.

Unfortunately, the parties were unable to agree and have submitted motions to fix the bond amount. At the outset, the Court recognizes, and the Court believes that the parties also recognize, that any amount fixed for the bond is somewhat speculative. So, it is left to the Court in the exercise of its discretion to come up with a bond amount.

CPLR §6312(b) states in part: "Except as provided in section 2512, prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the court, that the plaintiff, if it is finally determined that he or she was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the injunction...".

"The amount of that undertaking is left to the sound discretion of the court, although "it should be rationally related to the potential damages" that defendants could recover if an injunction is ultimately deemed unwarranted" (*Cooperstown Capital, LLC v. Patton*, 60 A.D.3d 1251, 1253 [3d Dept. 2009]).

The Court has thoroughly reviewed all motion and cross-motion papers, including affidavits, affirmations, memorandums of law and all exhibits.

It is the Court's understanding that the 2016 amendments to the Rental Policy dated February, 2013, were to restrict rentals to a minimum of no less than 30 days and to increase the conditional use permit fee to \$200.00 per rental. The Court speculates that most 30 day rentals would be during the months of June, July and August; so, each homeowner has the potential of renting for three months. There appears to be twelve Plaintiffs in the instant action owning eleven homes. (Presumably David and Diane Perilli are joint homeowners). The Court speculates that ten Plaintiffs and the Perilli Plaintiffs have the potential to renting for three months during the ensuing year and for paying a total of \$600.00 in rental fees to the Association of Property Owners of Sleepy Hollow Lake, Inc. (hereinafter "Association"). Thus, the total speculative loss of potential fees to the Association would be \$6,600.00. (11 homes X 600.00).

The Court declines to speculate what attorneys fees, if any, the Defendants would recover

from the Plaintiffs if the Defendants ultimately prevail in this matter. The Court will not include attorneys fees in fixing the bond amount. The Court recognizes that in the event Defendants' ultimately prevail in this matter, Defendants have a right to counsel fees under CPLR §6315 by motion and upon notice at the conclusion of the case.

Therefore, the Court in exercising its discretion, fixes the Plaintiffs' bond in the sum of \$6,600.00. Plaintiffs are directed to post the bond by Friday, April 27, 2018.

The Court denies Plaintiffs' cross-motion for remittance of fees paid in 2017. Plaintiffs have provided no basis for the Court to order the return of the conditional use permit fees paid in 2017.

Accordingly, based on the foregoing, it is hereby

ORDERED that Defendants' motion for an undertaking is granted; and it is further

ORDERED, that Plaintiffs are to obtain a bond in the amount of \$6,600.00 by Friday, April 27, 2018; and it is further

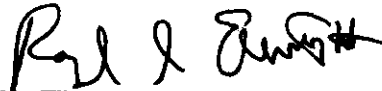
ORDERED, that Plaintiffs' cross-motion is denied; and it is further

ORDERED, that a conference will be held on Tuesday, May 1, 2018, at 10:00 a.m. at the Greene County Courthouse.

This shall constitute the Decision and Order of the Court. This Decision and Order is being returned to the attorneys for Defendants. All original supporting documentation is being filed with the Greene County Clerk's Office. The signing of this Decision and Order shall not constitute entry or filing under CLR 2220. Counsel are not relieved from the applicable provisions of that rule relating to filing, entry, and notice of entry.

SO ORDERED AND ADJUDGED
ENTER

Dated: April 5, 2018
Catskill, New York



RAYMOND J. ELLIOTT, III
Supreme Court Justice

Papers Considered:

1. Defendants' Notice of Motion for an Undertaking dated February 20, 2018; Affidavit of Laurel Mann, sworn to February 16, 2018, with annexed Exhibits A-B; Affirmation of John J. Privitera, Esq., dated February 16, 2018.
2. Notice of Cross-Motion dated March 1, 2018; Affidavit of William F. Ryan, Jr., Esq., sworn to March 1, 2018.
3. Reply Affidavit of Laurel Mann, sworn to March 8, 2018; Defendants' Reply Memorandum of Law dated March 9, 2018.