

**Skaneateles Country Club v Cambs**

2021 NY Slip Op 33995(U)

July 26, 2021

Supreme Court, Onondaga County

Docket Number: Index No. 000650/2021

Judge: Donald A. Greenwood

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This opinion is uncorrected and not selected for official publication.

**At a Motion Term of the Supreme  
Court of the State of New York,  
held in and for the County of  
Onondaga on June 22, 2021.**

**PRESENT: HON. DONALD A. GREENWOOD  
Supreme Court Justice**

**STATE OF NEW YORK  
SUPREME COURT COUNTY OF ONONDAGA**

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**SKANEATELES COUNTRY CLUB,**

**Plaintiff,**

**v.**

**OLIVIA CAMBS,**

**Defendant.**

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**DECISION AND ORDER  
ON MOTION**

**Index No.: 000650/2021**

**APPEARANCES: BRIAN J. BUTLER, ESQ., OF BOND, SHOENECK & KING, PLLC  
For Plaintiff**

**PETER J. CAMBS, ESQ., OF GOEDE, ADAMCYZK, DEBOEST &  
CROSS  
For Defendant**

**MEGAN K. THOMAS, ESQ. OF MACKENZIE HUGHES LLP  
Local Counsel**

The complaint in this matter seeks a declaratory judgment that the agreement between the parties constitutes a license which is terminable at will by the plaintiff. *See, CPLR § 3001.* The defendant interposed an answer with counterclaims seeking a declaratory judgment that the subject agreement is not terminable at will and for injunctive relief. Plaintiff then moved for summary judgment on its complaint and defendant has cross-moved for the same relief on her counterclaims.

Plaintiff's property in Skaneateles, New York includes the Breakwater and Boat Slip Project which consists of boat slips on Skaneateles Lake. On June 1, 2000, defendant entered into an Assignment Agreement with plaintiff which granted the defendant the right to use and occupy one of the slips. The Agreement provides that plaintiff "through its Board of Directors ...reserves the right to determine the specific boat slip location to be occupied by Assignee within the Breakwater and Boat Slip Project." *Assignment Agreement, para. 1*. Therefore, clearly no specific lease to any particular boat slip was granted. It further states that the "slip can be transferred by the Assignee to their offspring, provided such offspring is at the time of the transfer, a member in good standing of the Assignor." *Id. at para 7*. It likewise provides that the defendant as assignee "agrees to adhere to all the Rules and Policies of the Assignor at all times." *Id. at para 2*. This includes the Harbor Rules.

There is no dispute that there is a justiciable controversy concerning plaintiff's right to terminate the agreement at will. *See, CPLR § 3001*. Based on the record before it, this Court finds that the subject agreement constitutes a license, which, by definition, may be terminated by plaintiff. A license is a revokable privilege given to one without interest in the lands of another to do one or more acts of a temporary nature upon such lands. *See, Union Square Park Community Coalition v. New York City Department of Parks and Recreation*, 22 NY3d 648 (2014 ). Factors such as the amount of control the grantor retains over the premises, the exclusivity of the use of the premises by the grantee, the lack of express time limitations on the grantee's right to use the property and the personal and inalienable nature of the grantee's right of use are relevant considerations in the determination. *See, Union Square, supra*. The plaintiff has demonstrated that it retained significant control over the subject boat slip, and that it provided the defendant only with the right to use the slip. However, plaintiff retained control over its daily

operations. Therefore, a license and not a lease exists. *See, id.* In addition, the Court need only look to the following language of the Agreement, indicating that plaintiff “reserves the right to determine the specific boat slip location to be occupied by Assignee” (*para. 1*) and that after the determination has been made by plaintiff that the occupancy is subject to its rules and policies at all times. *See, para. 2.* The Harbor Rules likewise make clear that a license exists. They set forth the manner in which a slip may be used and provide for restricted use on the part of the defendant as assignee; specifically, that the slip holder does not have the right to allow another member or non-member to use slip and that plaintiff’s Board of Directors retains the right to cancel the Agreement if the rules are repeatedly violated. The Harbor Rules likewise set forth specifically enumerated rights and responsibilities. Thus, the Agreement and Harbor Rules clearly set forth plaintiff’s control concerning issues such as assignment, maintenance and enforcement and these factors weigh in favor of the determination that a license exists. *See, Union Square, supra.* The construction of the written Agreement and Harbor Rules incorporated therein is a question of law for the court. *See, Hartford Accident & Indem. Co. v. Wesolowski*, 33 NY2d 169 (1973). Where, as here, an agreement is complete, clear and unambiguous on its face, it must be enforced according to its plain meaning and terms. *See, Ames v. County of Monroe*, 162 AD3d 1724 (4<sup>th</sup> Dept. 2018). The Agreement here is unambiguous as the language it uses have a definite and precise meaning. The documents do not contain any language conveying to defendant exclusive rights to use and occupancy of the subject slip and instead reserves to the Board of Directors the right to assign a specific slip to be occupied by the defendant. Nor does the Agreement contain an express time limitation on defendant’s right to use the slip, which likewise supports the determination of a license. *See, Willow Tex, Inc. v. Dimacopoulos*, 68 NY2d 963 (1986).

In addition, the defendant's right to use the slip is personal and inalienable. A license is personal to the holder and is not assignable. *See, Simmons v. Abbondandolo*, 184 AD2d 878 (3<sup>rd</sup> Dept. 1992 ). While the narrow exception is that defendant may transfer the Agreement and her personal rights to an offspring, this applies only when the offspring is a member in good standing at the time of the transfer. Plaintiff has demonstrated that while the exception may provide defendant some ability to assign her rights, in order for her to effectuate such an assignment, she would not only have to have offspring, but the offspring would have had to be vetted and accepted as a member by plaintiff before any assignment, giving plaintiff ultimate control over who may exercise rights under the Agreement. This narrow assignment provision is insufficient to alter the determination that a license exists. *See, Sebco Laundry Sys. v. Oakwood Terrace Housing Corp.*, 277 AD2d 303 (2d Dept. 2000). Thus, because the Agreement constitutes a license, it is terminable at the plaintiff's will. *See, American Jewish Theater Company*, 203 AD2d 155 (1<sup>st</sup> Dept. 1994).

Therefore, there is no basis for defendant's claim that the agreement is continuous and indefinite. Licenses in real property are terminable at the will of the licensor. *See, Haines v. City of NY*, 41 NY2d 769 (1977); *see also, Cronkhite v. Cronkhite*, 94 NY323 (1884); *see also, McNamara v. Wilcox*, 73 AD 451 (1<sup>st</sup> Dept. 1902); *see also, Amer. Infertility of NY, PC v. Verizon NY, Inc.*, 70 Misc3d 1001 (NY Co. 2020). The subject Agreement involves real property as it provides defendant with the privilege of using and occupying one of plaintiff's boat slips. *See, Bennett v. Genesee Marina, Inc.*, 237 AD2d 908 (4<sup>th</sup> Dept. 1997 ). Because the language contained therein is clear and unequivocal and thus not reasonably susceptible to more than one interpretation, extrinsic or parol evidence is not allowed to determine the parties' intent. *See, Ames, supra*. Therefore, the affidavits offered by Bent Thomsen, who signed the Agreement on

plaintiff's behalf, and of defendant have no bearing on this Court's determination. *See, WWW Associates, Inc. v. Giocontieri*, 77 NY2d 157 (1990).

Now, therefore, for the foregoing reasons, it is

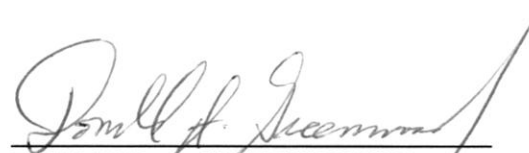
**ORDERED**, that the plaintiff's motion for summary judgment is granted, and it is further

**ADJUDGED AND DECLARED**, that the subject agreement is a license terminable at the plaintiff's will and it is further

**ORDERED**, that defendant's cross-motion for summary judgment is denied.

ENTER

**Dated: July 26, 2021**  
**Syracuse, New York**

  
**DONALD A. GREENWOOD**  
**Supreme Court Justice**

Papers Considered:

1. Plaintiff's Notice of Motion, dated May 4, 2021.
2. Affirmation of Brian J. Butler, Esq., dated May 4, 2021.
3. Affidavit of Zach Maslyn, dated April 29, 2021, and attached exhibit.
4. Plaintiff's Statement of Material Facts, dated May 4, 2021.
5. Plaintiff's Memorandum of Law, dated May 4, 2021.
6. Defendant's Notice of Cross-Motion, dated June 2, 2021.
7. Affirmation of Peter J. Cambs, Esq., dated June 2, 2021, and attached exhibits.
8. Affidavit of Bent L. Thomsen, dated March 2, 2021, and attached exhibit.
9. Affidavit of Olivia Cambs, dated May 27, 2021, and attached exhibit.
10. Defendant's Statement of Material Facts, dated June 2, 2021.
11. Defendant's Memorandum of Law, dated June 7, 2021.
12. Plaintiff's Memorandum of Law, dated June 15, 2021.
13. Affidavit of David Dickman, dated June 14, 2021.
14. Defendant's Memorandum of Law, dated June 18, 2021.
15. Letter of Brian J. Butler, Esq., dated June 21, 2021.