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| <b>Fields Enters. Inc. v Bristol Harbour Vil. Assn., Inc.,</b>                                                                                                                                                                 |
| 2021 NY Slip Op 34309(U)                                                                                                                                                                                                       |
| August 9, 2021                                                                                                                                                                                                                 |
| Supreme Court, Ontario County                                                                                                                                                                                                  |
| Docket Number: Index No. 127103-2020                                                                                                                                                                                           |
| Judge: J. Scott Odorisi                                                                                                                                                                                                        |
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STATE OF NEW YORK  
SUPREME COURT      ONTARIO COUNTY

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FIELDS ENTERPRISES, INC., and  
BRISTOL HARBOUR MARINA, LLC,

Plaintiffs,

-vs-

BRISTOL HARBOUR VILLAGE  
ASSOCIATION, INC., and  
SOUTH BRISTOL RESORTS, LLC,

Defendants

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Index #: 127103-2020

*Court Date - Via Microsoft Teams  
August 4, 2021*

**VIRTUAL APPEARANCES**

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*Attorney for Plaintiffs*

Anthony Rupp, Esq.  
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Bristol Harbour*

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South Bristol*

**DECISION**

**Odorisi, J.**

This action arises out of a dispute between a marina and a HOA. Pending before this Court are: (1) Plaintiffs' motion for partial summary judgment seeking certain declarations [Docket # 135 - Motion # 4]; and, (2) Defendant Bristol Harbour Village Association, Inc.'s cross-motion for summary judgment [Docket # 165 - Motion # 5]. For the reasons set forth hereinafter: (1) Plaintiff's motion is **DENIED**; (2) Defendant's cross-motion is **GRANTED IN PART AND DENIED IN PART**.

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## **LAWSUIT FACTS**

### ***Background Information***

Defendant Bristol Harbour Village Association, Inc. ("the Village" or "BHVA") is the homeowners association ("HOA") that manages a residential community on the west shore of Canandaigua Lake since 1971. During the development of the Village, a citizens group - Concerned Citizens of Canandaigua Lake ("CCCL") - raised objections to the same which resulted in a recorded 1990 Stipulation and Agreement ("1990 Stipulation") limiting the project [Docket # 151].

On a landlocked parcel at the bottom of a sheer cliff below the Village sits a marina. In 2016, Plaintiffs bought the marina and rented slips to non-residents as was the allegedly longstanding practice. In 2018, a lawsuit against the marina ended with a Consent Order decreeing that the 1990 Stipulation ran with the land [Docket # 153].

The current problem stems from slip rentals to non-residents and marina access for that purpose, which can be done only by a staircase or an elevator - both of which are now closed.

### ***Procedural History***

This action was commenced on May 18, 2020, and it contains claims for: declaratory judgment; permanent injunction; tortious interference; breach of contract; promissory estoppel; and, ejectment. On the same day as commencement, Plaintiffs moved for a preliminary injunction barring elevator access denials on the ground that non-resident usage was permissible.

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The Village answered denying liability, and then cross-moved for sanctions due to Plaintiffs' failure to disclose the 1990 Stipulation and 2018 Consent Order. Plaintiff filed an Amended Complaint as of right. The two motions were heard at Special Term on July 14<sup>th</sup>, and by way of Decisions filed July 21<sup>st</sup>, this Court denied in part and granted in part Plaintiffs' motion and denied the Village's cross-motion. After the rulings, the Village answered the revised Complaint, and added counterclaims - to which Plaintiffs replied.

On January 6, 2021, the Plaintiff LLC and Laura and Todd Cook assigned their various claims against South Bristol Resorts, LLC ("South Bristol") - a prior owner - to Plaintiffs regarding the title for the marina parcel. The next day, Plaintiffs came back to court seeking leave to file a Second Amended Complaint. This motion was unopposed and granted. In its ensuing new answer, the Village unilaterally removed many counterclaims, and then started a separate action based upon those same matters [Index # 129152-2021].<sup>1</sup> South Bristol has answered and cross and counterclaimed.

On June 7<sup>th</sup>, the 1990 Stipulation was purportedly modified to remove the ban on non-resident slip rentals [Docket # 154].

### ***Brief Summary of Motion Contentions***

#### ***Plaintiff's Motion - Motion # 4***

The day after the modification, Plaintiffs moved for partial summary judgment seeking declarations that:

- (a) . . . BHVA . . . is not a third-party beneficiary of, and cannot enforce, the 1990 Stipulation . . .

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<sup>1</sup> In the other action, this Court dismissed many claims as duplicative of the improperly withdrawn counterclaims.

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(b) the boat slips and docks . . . are outside of the limits of real property subject to the Bristol Harbour Village Restated and Amended Declaration of Covenants, Easements, Charges and Liens, and are not subject to regulation by BHVA; and

(c) BHVA cannot prevent Plaintiffs renting boat slips to non-Village residents . . .

[Docket # 135].

Plaintiffs contend that there is no requirement that non-resident marina users had to be phased out, and also that the 1990 Stipulation was not meant to protect the HOA [Docket #'s 135-158]. Plaintiffs deny that HOA residents ever rented more than 119 slips, and they further point out that no one objected to the slip expansions in 2004 and 2012. Plaintiffs argue that the 2018 Consent Order did not cover the marina. In the alternative, Plaintiffs submit that the 2021 modification removed any slip rental constraints. Also, Plaintiffs assert that the floating docks are outside of the Village and thus not subject to any of its terms.

South Bristol opposes the motion because it is premature.

*The Village's Cross-Motion - Motion # 5*

On June 30<sup>th</sup>, the Village cross-moved for summary judgment declaring that:

- (1) BHVA has standing to enforce the 1990 Stipulation;
- (2) the 1990 Stipulation restricts the rental of the boat slips . .
- (3) . . . Plaintiffs' purported modification . . . to the 1990 Stipulation is null and void . . .
- (4) that BHVA has the full authority to restrict and control access to its property . . .

[Docket # 165].

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The Village contends that its members were named beneficiaries of the 1990 Stipulation; therefore, it has standing to enforce it. The 2018 Consent Order reaffirms the 1990 Stipulation as running with the land - a judicial ruling Plaintiffs cannot escape. The Village may also enforce the 1990 Stipulation as a successor to the developer. The Village objects to going outside of the 1990 Stipulation's clear terms to decipher intent. The Village assails the 2021 modification as incomplete and thus not enforceable. Without the modification, the 1990 Stipulation clearly prohibits non-resident slips rentals past the 119 threshold. The Village argues that it has the absolute right to regulate its own property.

*Plaintiffs' Reply/Response*

Plaintiffs claim that all remaining beneficiaries signed the 2021 Modification, and they refute that the Village is a successor. Plaintiffs add that enforcement of the 1990 Stipulation is untimely.

*Defendant's Cross-Motion Reply*

The Village replies that enforcement of the 1990 Stipulation is not time-barred.

**LEGAL DISCUSSION**

Neither side is entitled to their complete summary judgment relief, but Defendant may have some partial remedy. See CPLR 3212 (b) & (e).

***Standard of Review***

The starting place for analyzing the motions for summary judgment is the CPLR itself, which provides in pertinent part that:

A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it

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shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action or defense has no merit. **The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the court as a matter of law in directing judgment in favor of any party. Except as provided in subdivision (c) of this rule the motion shall be denied if any party shall show facts sufficient to require a trial of any issue of fact.**

CPLR 3212 (b) (emphasis added).

CPLR 3212 (b)'s summary judgment provision means that "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 issues of fact" necessitating a trial. Alvarez v. Prospect Hosp., 68 NY2d 320, 324 (1986). Proof offered by a moving party must be in admissible form. See Zuckerman v. City of New York, 49 NY2d 557, 562 (1980); Dix v. Pines Hotel, Inc., 188 AD2d 1007 (4th Dept 1992). Failure of the moving party to make the statutorily required *prima facie* case mandates denial of the motion, regardless of the sufficiency of the opposing papers. See Winegrad v. New York Univ. Med. Ctr., 64 NY2d 851, 853 (1985).

Once a *prima facie* showing has been made, then "the burden shifts to the party opposing the motion for summary judgment to produce evidentiary proof in admissible form sufficient to establish the existence of material issues of fact which require a trial of the action." Alvarez, 68 NY2d at 324. See also Mortillaro v. Rochester Gen. Hosp., 94 AD3d 1497, 1499 (4th Dept 2012).

In assessing a summary judgment motion, "the focus of the court's concern is issue finding, not issue determination, and the affidavits should be scrutinized carefully in the

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light most favorable to the party opposing the motion." Robinson v. Strong Mem. Hosp., 98 AD2d 976 (4th Dept 1983). See also Branham v. Loews Orpheum Cinemas, Inc., 8 NY3d 931, 932 (2007); Victor Temporary Services, a Div. of Victor United, Inc., a Subsidiary of Walter Kidde, Inc. v. Slattery, 105 AD2d 1115, 1117 (4th Dept 1984). Moreover, summary judgment is a drastic measure as it deprives a party of his or her day in court and will normally have *res judicata* effects. See Ugarriza v. Schmieder, 46 NY2d 471, 474 (1979); Harrigan v. Super Products Corp., 237 AD2d 882, 883 (4th Dept 1997).

Despite all of the above, summary judgment is not contradicted on a question of law. See Port of New York Auth. v. 62 Cortlandt St. Realty Co., 18 NY2d 250, 255 (1966); Harper v. Lumbermens Mut. Cas. Co., 174 AD2d 1031 (4th Dept 1991) (granting summary judgment on question of law).

The above standard will next be applied to both side's motions.

#### ***Merits Review***

As a threshold matter, the Court notes that each side submitted a lot of inadmissible exhibits. It is a "strict requirement" that summary judgment moving proof must be in admissible form. Friends of Animals, Inc. v. Associated Fur Mfrs., Inc., 46 NY2d 1065, 1068 (1979). See also Vincent Automotive, Inc. v. Chevron U.S.A. Inc., 107 AD3d 1439 (4th Dept 2013) (moving party did not establish *prima facie* entitlement to judgment as a matter of law based upon hearsay proof). Consequently, and for many motion grounds, neither party made out a *prima facie* case. See Winegrad, 64 NY2d at 853; Stevens v. Waters, 201 AD2d 872 (4th Dept 1994) (moving party failed to sustain his burden to set forth evidentiary proof, in admissible form, eliminating any material issue of fact).

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In any event, and even with *prima facie* showings, there are issues of fact preventing the resolution of many items as a matter of law. As the motion grounds overlap, they are being addressed together by issue for ease of review.

*Standing in Regard to the 1990 Stipulation*

The Village has standing to enforce the 1990 Stipulation per the face of that recorded document [Docket # 151].

As decreed by the Fourth Department “an owner of neighboring land, for whose benefit a restrictive covenant is imposed by a grantor, may enforce the covenant as a third-party beneficiary despite the absence of any privity of estate between the grantor and the neighbor.” Nature Conservancy v. Congel, 253 AD2d 248, 251 (4th Dept 1999) (citing Zamiarski v. Kozial, 18 AD2d 297, 299 (4th Dept 1963)). See also Vogeler v. Alwyn Improvement Corp., 247 NY 131, 135 (1928).

As noted above, summary judgment is not contradicted on a question of law, and one type of legal question is contract interpretation. See Nancy Rose Stormer, P.C. v. County of Oneida, 66 AD3d 1449, 1450 (4th Dept 2009). The standing issue revolves around the interpretation of the 1990 Stipulation. The intent of the 1990 Stipulation is best judged by its plain language. See Greenfield v. Philles Records, Inc., 98 NY2d 562, 569 (2002) (a written agreement that is complete, clear and unambiguous on its face must be enforced according to the plain meaning of its terms); Kula v. State Farm Fire and Cas. Co., 212 AD2d 16, 19 (4th Dept 1995).

Here, the 1990 Stipulation is replete with references to the Village residents, and its clear wording reasonably contemplates benefits for them. “A party, claiming to be a third-party beneficiary, has the burden of demonstrating that he has an enforceable right.”

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Airco Alloys Div., Airco Inc. v. Niagara Mohawk Power Corp., 76 AD2d 68, 79 (4th Dept 1980). "An intention to benefit a third party must be gleaned from the contract as a whole."  
Logan-Baldwin v. L.S.M. Gen. Contractors, Inc., 94 AD3d 1466, 1468 (4th Dept 2012). As the Court of Appeals has decreed:

Parties asserting third-party beneficiary rights under a contract must establish

'(1) the existence of a **valid and binding contract** between other parties, (2) that the contract was **intended for [their] benefit** and (3) that the **benefit to [them] is sufficiently immediate**, rather than incidental, to indicate the assumption by the contracting parties of a duty to compensate [them] if the benefit is lost'

Mendel v. Henry Phipps Plaza W., Inc., 6 NY3d 783, 786 (2006) (emphasis added and internal citations omitted). See also Beasock v. Canisius Coll., 126 AD3d 1403, 1404 (4th Dept 2015) (contention that the defendant was not an intended third-party beneficiary of the subject contract was without merit).

The 1990 Stipulation satisfies the above test. To start, the Wherefore Clause Plaintiffs cite also references "**others** with an interest in the environmental consequences of such development," so it is not limited to just CCCL as Plaintiffs contend [Docket # 151 {emphasis added}]. See Grand Manor Health Related Facility, Inc. v. Hamilton Equities Inc., 65 AD3d 445, 447 (1st Dept 2009) (recognizing the limited role a wherefore clause plays in interpreting substantive contract provisions). Further, the 1990 Stipulation provides in very pertinent part that:

4. . . . it is stipulated and agreed that the lakefront and shoreline of the BHV project *{the Village}*, and the boat slips located there, **shall be further developed only for the use and benefit of owner occupied or owner leased residential**

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**units (Residential Owners).** At the time of executing this Agreement there are boat slips or mooring facilities for 128 boats at BHV . . . Of the remaining 119 boat slips, some are rented or available for rent to persons other than BHV Residential Owners. As demand increases, those slips are eventually to be reserved only for BHV Residential Owners and there shall be no further construction or development of boat slips and mooring facilities until the existing 119 slips are utilized only by such BHV Residential Owners. When the existing total of 128 slips or moorings are utilized solely by BHV Residential Owners and the Developer as herein described, then the Developer may construct up to 97 additional boat slips or moorings for a maximum of 225 and CCCL agrees not to object to the construction of the additional 97 slips or moorings. The additional slips or moorings shall also be for the **exclusive use only of BHV Residential Owners** . . . Developer agrees that the maximum number of slips and moorings at the BHV project shall never exceed 280 and that any and all additional slips shall be constructed **solely for the use of BHV Residential Owners** . . .

5. . . . Waterfront, beach and docking facilities are intended to be used primarily by BHV Residential Owners and not by members of the general public . . .

[Docket # 151, ¶¶ 4-5 {emphasis added}].

These express references to Village residents is sufficient to confer third-party intended beneficiary status, and therefore, standing. Cf. Coalition for Cobbs Hill by Pastecki v. City of Rochester, 194 AD3d 1428, 1436 (4th Dept 2021) (the petitioner failed to establish that the subject agreement was intended for the benefit of surrounding neighbors) [Docket # 137, p. 4]. Because benefits to the Village residents were an overt part of the 1990 Stipulation, Plaintiffs' case of Coalition for Cobbs Hill by Pastecki is factually distinguishable, and as such, does not compel the granting of their motion, or the denial of the Village's cross-motion.

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Also, the 1990 Stipulation inures to successors, of which the Village is one as an owner of at least one parcel. The Stipulation provides in relevant part that:

9. This Stipulation and Agreement shall be fully operative and **binding upon the Developer, its successors, heirs, assignees, and transferees.** To the maximum extent possible the terms and conditions herein contained **shall run with the land** and be fully operative not only upon the Developer, but also upon any persons or legal entity with whom the Developer may be affiliated in undertaking development at BHV, and their successors . . .

[Docket # 151, ¶ 9].

The Village currently owns the Cliff Face Parcel so it has rights related to the 1990 Stipulation.

In light of the above, either legal ground - successor or third-party beneficiary - functions to afford standing to employ the 1990 Stipulation.

Plaintiffs' efforts to negate the 1990 Stipulation's beneficiary scope via parole evidence is disregarded. "Evidence outside the four corners of the document as to what was really intended but unstated or misstated is generally inadmissible to add to or vary the writing." W.W.W. Assoc., Inc. v. Giancontieri, 77 NY2d 157, 162 (1990). This rule gives "stability to commercial transactions by safeguarding against fraudulent claims, perjury, death of witnesses . . . infirmity of memory . . . [and] the fear that the jury will improperly evaluate the extrinsic evidence." Schron v. Troutman Sanders LLP, 20 NY3d 430, 436 (2013). The 1990 Stipulation - as to identified beneficiaries - is not ambiguous, so reliance on outside proof is unwarranted. Therefore, Mrs. Cook's 2020 Affidavit is improper parole proof.<sup>2</sup>

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<sup>2</sup> Mrs. Cook has now refuted her earlier statement [Docket # 173].

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Lastly, this Court disagrees with Plaintiffs' reply argument that BHVA is barred from invoking the 1990 Stipulation by the 2-year statute of limitations in RPAPL 2001 as that section does not control who uses an existing facility for its normal purpose [Docket # 137, p. 9].<sup>3</sup> The plain reading of Section 2001 does not support Plaintiffs' invocation of its limitations period. See Statute § 94; Tall Trees Const. Corp. v. Zoning Bd. of Appeals of Town of Huntington, 97 NY2d 86, 91 (2001); Cayuga Indian Nation of New York v. Gould, 66 AD3d 100, 112 (4th Dept 2009), aff'd as mod., 14 NY3d 614 (2010). When properly framed as an issue as to who can traverse HOA property to use the marina for its regular purpose, Plaintiffs' case-law on the topic becomes inapposite. Cf. Matter of J.B. Realty Enter. Corp. v City of Saratoga Springs, 270 AD2d 771, 774 (3d Dept 2000) (case over use a park to build pavilions for a farmers' market); Oneida County Mobile Home Sales, Inc. v. Niagara Mohawk Power Corp., 63 AD2d 385, 391 (4th Dept 1978) (lawsuit dealt with the location of mobile homes under a power line easement), mod., 47 NY2d 954 (1979).<sup>4</sup>

In sum, the BHVA has standing to enforce the 1990 Stipulation. Accordingly, that portion of Plaintiffs' motion is denied, and the corresponding part of BHVA's cross-motion is granted.

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<sup>3</sup> Plaintiffs did not originally pursue the RPAPL issue as a ground to win summary judgment. See O'Neil v. Holiday Health & Fitness Centers of New York, Inc., 5 AD3d 1009, 1010 (4th Dept 2004) (finding that the trial court erred in addressing ground for summary judgment raised for the first time in reply papers).

<sup>4</sup> Berman v. Children's Aid Socy., 151 AD3d 680 (2d Dept 2017), which was cited by Plaintiff's during oral argument does not contain a substantive discussion of Section 2001, so it is of no value to the legal analysis at hand.

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*1990 Stipulation Violation / Waiver and Estoppel*

Plaintiffs next contend that the 1990 Stipulation is not controlling as its conditions were never satisfied, namely residents never took up over 119 slips so the exclusivity requirement was not triggered. Defendant refutes the same and cites other Stipulation language. The Court finds that the motion records are too unsettled and material issues of fact abound preventing a final determination that the 1990 Stipulation was not followed, and if Defendant may have waived the issue. See e.g. Halfond v. White Lake Shores Ass'n, Inc., 114 AD3d 1315, 1317 (4th Dept 2014) (issues of fact prevented a summary judgment adjudication on restrictive covenant claim).

As to negative easements, the Court of Appeals has decreed that:

Restrictive covenants are also commonly categorized as negative easements. They restrain servient landowners from making otherwise lawful uses of their property . . . However, the law has long favored free and unencumbered use of real property, and **covenants restricting use are strictly construed against those seeking to enforce them . . .**

Witter v. Taggart, 78 NY2d 234, 237-238 (1991) (emphasis added). See also Buffalo Academy of the Sacred Heart v. Boehm Bros., 267 NY 242, 249 (1935); Kleist v. Stern, 174 AD3d 1451, 1453 (4th Dept 2019).

"[A] party seeking to enforce a restriction on land use must prove, by clear and convincing evidence, the scope, as well as the existence, of the restriction." Greek Peak, Inc. v. Grodner, 75 NY2d 981, 982 (1990). See also Dodge v. Baker, 194 AD3d 1348 (4th Dept 2021).

With the above principles in mind, the Court concludes that a judicial decree about infringement of the 1990 Stipulation's term cannot issue. To start, the 1990 Stipulation's

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language articulating the slip boundary is not the clearest. “[D]emand increases” and “eventually” are vague terms. This Court is reluctant to premise a final rental ban on such murky wording.

In addition, Plaintiffs submit affidavits that the 119 slip threshold was never exceeded [Docket #'s 147, 189, 196], but other records BHVA supplies show that the dock expansions were exclusively for resident use [Docket # 184]. These juxtaposed positions about marina operations create a factual dispute reserved for a jury. See generally S. J. Capelin Assoc., Inc. v. Globe Mfg. Corp., 34 NY2d 338, 341 (1974); Craft v. Maier, 167 AD2d 933 (4th Dept 1990).

As to Plaintiffs' alternative contention that the HOA waived enforcement by not objecting to the dock expansions or non-resident rentals earlier - that cannot yet be decided as matter of law. The issue of a possible waiver is traditionally a question of fact. See e.g. Fundamental Portfolio Advisors, Inc. v. Tocqueville Asset Mgt., L.P., 7 NY3d 96, 104 (2006) (affirming denial of summary judgment given factual issues surrounding waiver defense); Town of Mexico v. County of Oswego, 175 AD3d 876 (4th Dept 2019) (disputed waiver was an issue of fact). As explained in Fundamental Portfolio Advisors, Inc., a contractual rights waiver “‘should not be lightly presumed’ and must be based on ‘a clear manifestation of intent’ to relinquish a contractual protection.” Id. at 104 (quoting Gilbert Frank Corp. v. Fed. Ins. Co., 70 NY2d 966, 968 (1988)). Here, Plaintiffs proffer a prolonged pattern of acquiescence from the HOA to the non-resident renters. Nevertheless, and whether characterized as waiver, estoppel, or laches, this Court declines to declare a forfeiture of the 1990 Stipulation's rental terms. As suggested by South Bristol, the parties need to engage in discovery to explore the waiver/estoppel/laches

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matter. See CPLR 3212 (f); Buffamante Whipple Buttafaro, Certified Pub. Accountants, P.C. v. Dawson, 118 AD3d 1283, 1284 (4th Dept 2014) (reversing granted summary judgment motion based upon CPLR 3212 (f)).

In all, a final ruling on compliance with the 1990 Stipulation, or waiver of the same, cannot be made at this time. This aspect of both motions is denied.

*1990 Stipulation Modification*

As a further ground for avoiding the 1990 Stipulation is Plaintiffs' shifted focus to a 2021 modification removing the non-resident rental prohibition. This amendment maneuver is telling of Plaintiffs' true view of the 1990 Stipulation's impact on the marina operations, and reinforces this Court's standing ruling.

For context, the modification came just the day before Plaintiffs moved for summary judgment. Consequently, no discovery has taken place regarding the same. This lack of discovery militates against a summary judgment ruling on the modification's ultimate effectiveness. See CPLR 3212 (f); Freier v. Amax, Inc., 217 AD2d 981 (4th Dept 1995) (holding that the Supreme Court did not abuse its discretion in denying the defendant's summary judgment so that discovery could take place). Discovery will confirm whether or not all needed signatories were in fact included in order to alter the original rental prohibition.

In sum, this section of each motion is denied.

*Regulation of Village Grounds*

Finally, the parties spar over what property BHVA can oversee. Even if the docks are on state land as Plaintiffs indicate, this Court agrees with BHVA that it can reasonably manage its own land, *i.e.*, parcels needed to access the marina. Separate and apart from

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that power, BHVA may also be able to weigh in on the slip usage via the 1990 Stipulation, which runs with the land, not its inherent HOA authority.

In all, this issue in Plaintiffs' motion is denied, but granted in regard to Defendant's cross-motion.

### CONCLUSION

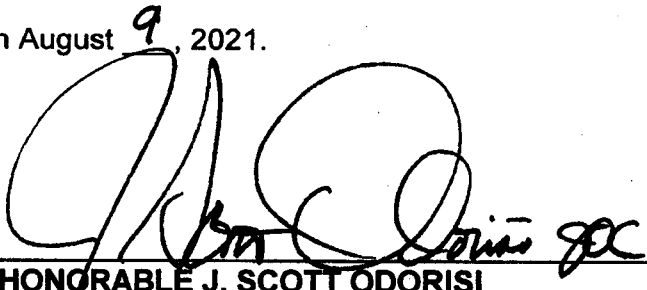
Based upon all of the foregoing, it is the Decision of this Court that:

1. Plaintiffs' motion is **DENIED**.
2. Defendant's cross-motion is **GRANTED IN PART AND DENIED IN PART**.

Defendant's motion is **GRANTED** as to the standing issue with respect to the 1990 Stipulation, as well as its ability to reasonably regulate its own property, but **DENIED** as to the remaining parts thereof.

As the prevailing party, Defendant is directed to E-file a Proposed Order within thirty (30) days.

Signed at Rochester, New York on August 9, 2021.



HONORABLE J. SCOTT ODORISI  
Supreme Court Justice