

05-11618SUPREME COURT - STATE OF NEW YORK
I.A.S. PART 32 - SUFFOLK COUNTY**PRESENT:**Hon. MARY M. WERNER
5/26/05
Justice of the Supreme CourtMOTION DATE _____
ADJ. DATE 8/25/05
Mot. Seq. # 001 - MG; CASEDISP

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JOSEPH A. SCALISE, EVELYN SCALISE	:	MARTELLO LaMAGNA
OLIVIERI, et al.	:	
and JOSEPH C. SCALISE,	:	Attorneys for Petitioners
	:	666 Old Country Road, Suite 210
Petitioners,	:	Garden City, New York 11530
	:	
- against -	:	BARRY V. PITTMAN, ESQ.
OAK ISLAND BEACH ASSOCIATION, INC.	:	Attorney for Respondents
and THE BOARD OF OAK ISLAND BEACH	:	26 Saxon Avenue, P.O. Box 5647
ASSOCIATION, INC.	:	Bay Shore, New York 11706-0455
	:	
Respondents.	:	

for an order pursuant to Article 78 CPLR, directing :
the aforesaid respondents to rescind and annul the :
determination expelling petitioners as members of :
the Oak Island Beach Association, Inc. and for :
such other appropriate relief :

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Upon the following papers numbered 1 to 61 read on this Article 78 proceeding; Notice of Motion/
Order to Show Cause and supporting papers 1 - 33; Notice of Cross Motion and supporting papers _____
; Answering Affidavits and supporting papers 34 - 58; Replying Affidavits and supporting papers
59 - 61; Other _____; (~~and after hearing counsel in support and opposed to the motion~~) it is,

ORDERED AND ADJUDGED that in this Article 78 proceeding the petitioners seek: (1) to annul the determination made January 14, 2005 by the respondent Board of Directors who voted to terminate petitioners' membership; (2) to declare the petitioners members of the Association in good standing; (3) to declare the vote cast by members present at the special meeting held April 2, 2005, which overruled the board valid; and (4) disclosure and a stay of eviction. The petition is granted; and it is

ORDERED AND ADJUDGED that the determination of the Board of Directors, Oak Island Beach Association, Inc. to expel petitioners is vacated and annulled as an arbitrary, capricious, abuse of discretion, contrary to law, in violation of association charter, bylaws, rules and

ORDERED AND ADJUDGED that the votes cast by members present to overrule the determination of the board were valid and the petitioners are declared to be members of the association in good standing, subject to the rules, regulations, bylaws, charter and provisions of the lease; and it is

ORDERED AND ADJUDGED that the respondents are directed to preserve all the votes of the members present at the special meeting called of the membership April 2, 2005 including the absentee ballots considered as part of the vote; and it is

ORDERED AND ADJUDGED that respondents are directed to provide petitioners and their representatives access to inspect and copy the minutes of meetings commencing from 1998 to present and review of all documents pertaining to the petitioners including complaints and statements of witnesses, at a mutually agreed time and place; and it is

ORDERED AND ADJUDGED that the petitioners' request to depose non-party witnesses is denied as premature, without prejudice to further proceedings; and it is

ORDERED AND ADJUDGED that petitioners and respondents, their agents, servants, employees, attorneys or any person acting on their behalf are hereby restrained from actions that may reasonably interfere, directly or indirectly, with the quiet use and enjoyment of the parties' respective interests in the premises from adversarial contact, verbal or physical, or any activities to further eviction, pending proof to support suspension or expulsion, based on the chronic failure to comply with the rules, regulations, bylaws and/or lease, and without prejudice to alternate legal remedy; and it is further

ORDERED AND ADJUDGED that this decision constitutes the judgment of the court and petitioners shall recover from respondents the costs and disbursements incurred in this prosecution in a sum to be determined.

Respondents Oak Island Beach Association, a domestic not for profit corporation, is the lessee of a fifty year ground lease from the Town of Babylon which was originally signed December 5, 1973, and renewed on August 14, 1990 to expire December 31, 2050. In turn the lessee, Oak Beach has entered 71 separate subleases in exchange for the payment of rent with various individuals, known as subtenants of improved residential lots, for use as single, private, one family dwellings. The value of each subleased premises is alleged to be estimated at \$1,000,000.00. All the lots or plots are set forth on Map of Oak Beach Association, Inc., Town of Babylon, County of Suffolk, dated May 1957, February and November 1952, as revised December 15, 1960. The Board of Directors of the Association consists of four elected officers (President, Vice President, Secretary and Treasurer), and three elected directors who conduct business pursuant to By Laws, and Rules and Regulations of the Association. The petitioners Joseph A. and Evelyn Scalise have subleased lot known as #39 The Bayou, Oak Island Beach, since on or about January 1, 1974. The petitioner Joseph C. Scalise who is the son of Joseph A. Scalise has subleased lot known as #38 The Bayou, Oak Beach Island, since on or about 1998.

The determination made by respondents to evict petitioners who have been member tenants for 35 years is based on seven charges which enumerate minor, personal encounters with several board members which do not authorize suspension or eviction under the lease, bylaws, or rules and regulations of the incorporated association.

In addition, there is no admissible evidence that petitioners created a nuisance or trespassed in violation of respondents' Rules and Regulations of 1999, or any provisions of the lease, charter and bylaws

such that warranted the board vote on May 13, 2004 for expulsion or eviction of petitioners pursuant to Article III §4. In fact, the board vote was clearly overruled by the members present in compliance with the bylaws at the special meeting held April 2, 2005 upon petitioners' written appeal.

This proceeding arises from several personal disputes with neighbors, former friends and board members which commenced on or about 1998, and escalated to the board's determination to terminate petitioners' leasehold interest without authorization or jurisdiction under Article III-Membership §§3, 4. Proof of petitioners' default or breach of the sublease, paragraph 39(1)(c), is not demonstrated. Petitioners appear to have complied with the lease, charter, and bylaws as amended after the charges alleged herein pertaining to the Association rules, regulations, and bylaws on membership or privileges of membership, Article III §§3, IX.

The seven charges enumerated against petitioners range from 1999 to June 2002. The May 13, 2004 Notice from the Board of Directors Meeting concerns personal disputes with several neighbors who were also members of the board. The charges involve unauthorized plantings, posting signs, spraying and obstruction of beach access. The claims which concern single, isolated instances appear to have been remedied. Other matters based on conclusory claims lack evidence. The association bylaws, amended August 23, 2003 subsequent to the noticed charges, provide that after July 12, 1968 no member may be continued unless there is an executed, unexpired sublease covering a plot or a pledge or mortgage of a sublease as security for a loan to purchase or improve the property or a contract to purchase a leasehold which was delivered to the association pending proof of payment, eligibility and acceptance (Article III-Membership §3[a][b][c]). Expulsion or suspension may be imposed for failure of the member to comply with the charter, bylaws, rules and regulations or the lease by a majority vote of directors present at the meeting following notice in writing to the member who is charged and which provides an opportunity to be present and defend (Article III §4-Bylaws).

The member so noticed may appeal the board vote for expulsion or suspension to the membership at large by notice in writing delivered to the association secretary within ten (10) days of the board's notice of action. At the meeting scheduled, the members who are present may vote to sustain the board action or overrule the expulsion or suspension by a majority vote. If no membership meeting is scheduled within sixty (60) days of notice of appeal, a special meeting is called. The affected member's status remains unchanged. If no appeal is taken or the membership rejects the appeal and upholds the board, the sublease and all the member's rights are surrendered. There is provision for absentee ballot under some circumstances (Article IX §§3, 4). However, there is no express provision for an absentee ballot vote with respect to a member expulsion or suspension (Article III §4; Article IX §§3, 4).

Under the Rules and Regulations of 1999 all persons on association property must respect the rights of members, tenants and guests, avoiding nuisance or trespass. There is no association responsibility for unguarded breaches. Members are required to provide sufficient parking space and maintain clear roads. Leased parcels are expected to be maintained in good repair and appearance. Members are responsible for tenants and guests and for measures to prevent erosion, water pollution, installation of sand fences, planting beach grass and the avoidance of pesticides. Unresolvable grievances between neighbors should be presented to the proper committee or member of the board (Rules and Regulations 1999 ¶1, 4, 5, 10, 11, 12, 13, 14). There is no direction for reference when a grievance concerns a board member.

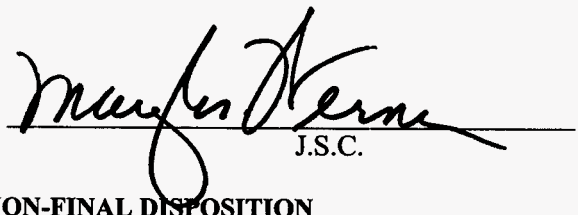
Upon the board's service of notice on the Scalises, this litigation ensued. By order to show cause dated May 24, 2004, petitioners sought declaratory relief to enjoin respondents from holding a meeting with regard to petitioners' expulsion or suspension. The order was signed by Hon. Donald R. Blydenburgh who

granted the relief pending a hearing and determination. Pursuant to subsequent order dated September 2, 2005 issued by Justice Werner, petitioners' application for injunctive relief was denied as premature pending joinder. The cross motion by respondents to dismiss the first, second and third causes of action with respect to constitutional matters, civil conspiracy and allegations purporting to plead a claim for the intentional infliction of emotional harm was dismissed without prejudice to further relief after appeal to the membership under the bylaws (*Church of St. Paul & St. Andrew v Barenck*, 67 NY2d 510, 505 NYS2d 24, writ of cert den 479 US 985, 107 SCt 574 [1986]). The within proceeding was commenced after the meeting of the membership, which initially voted to overrule the board in favor of petitioners.

The hearing before the board was held on January 8, 2005 pursuant to notice dated October 26, 2004. The outcome, summarized in a letter dated January 14, 2005, reflected that five of seven members of the board had voted to expel petitioners. Petitioners appealed for a meeting of the membership by letter dated January 20, 2005. The special meeting of the membership was held on April 2, 2005. In accord with a notice dated March 13, 2005 the membership present voted twenty-two to nineteen to overrule the expulsion of Joseph A. and Evelyn Scalise, members since 1971, and twenty-two to twenty-one voted to overrule the expulsion of Joseph C. Scalise, a member since 1998. However, over the objections of the members present, the board elected to accept absentee ballots and faxes, which changed the balance of the members' vote to thirty-one to twenty-five against Joseph A. and Evelyn and thirty-three to twenty-five against Joseph C. Scalise Jr. in favor of the board.

The court notes that an independent action filed by the association against petitioners is also pending (02-11915) for damage to trees and shrubs. The latter action involves several former members of the board, Plaissay and Solina. The action against Plaissay, who is now a resident of Montana, was dismissed for lack of jurisdiction. Though no longer members, Solina and Plaissay were named complainants in the charges herein.

Dated: 12/14/05


J.S.C.

 x FINAL DISPOSITION NON-FINAL DISPOSITION