

Condos denied equitable relief in final chapter of Goat Island saga

By: Barry Bridges
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Litigation that has snaked its way through the state and federal courts for years has concluded with a decision from the 1st U.S. Circuit Court of Appeals that several Goat Island condominium associations are not entitled to compensation for the seven-year occupation and use of an events facility that was built after development rights to the parcel had expired.

A pair of earlier Rhode Island Supreme Court holdings (the *America* decisions) had determined that, because of that expiration, the associations held title to the Regatta Club, even though the developer spent \$3 million in constructing it.

But the associations also made a claim in Bankruptcy Court for the fair value of the developer's use and occupancy of the property while the rightful title was being litigated.

In the latest ruling, the 1st Circuit found there was no implied-in-fact contract to make payments for the building's use, and further upheld the Bankruptcy Court's denial of restitutionary relief to the associations.

"Having concluded that the *America* opinions did not bind the bankruptcy court's equitable authority, we find no abuse of discretion in the bankruptcy court's ultimate decision that the associations failed to [show] that inequity would result if [the developer] did not pay them for the use and occupancy of the Regatta Club," Judge Sandra L. Lynch wrote on behalf of the panel.

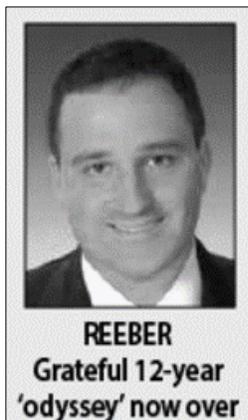
Lynch went on to say that "[e]quity does not bestow additional relief on the associations, which continue to benefit from the facility that they inherited without any investment of their own."

The 26-page decision is *In re: IDC Clambakes, Inc.*, Lawyers Weekly No. 01-072-17. The full text of the ruling [can be found here](#).

'Gross overreaching'

Matthew C. Reeber of Pannone, Lopes, Devereaux & O'Gara in Johnston said the ruling ends a "nearly 12-year odyssey" that started with the filing of the Chapter 11 bankruptcy petition.

Reeber was among the attorneys representing the debtor, IDC Clambakes, a corporate entity of the developer and operator of the Regatta Club.



"Throughout the entire procedural history, Clambakes said that the claims would amount to an inequitable windfall," Reeber said. "That was our argument from the beginning. It was gross overreaching by the associations, and for our client it finally puts to rest this argument and ends these claims."

On the implied contract holding, Reeber emphasized that Clambakes never paid rent to the associations and that the associations always treated the company as the owner of the Regatta Club.

"We saw the notion of an implied contract as always being factually incorrect, and the 1st Circuit agreed with that," he said.

Reeber added that the 1st Circuit put the *America* decisions in proper context, with the holding acknowledging that the Supreme Court was very careful in its concern that there not be an inequitable windfall to the associations.

Frank A. Lombardi, a condominium attorney with Goodman, Shapiro & Lombardi in Lincoln, said a critical factor was that all parties were aware of what was going on as the facility was being built.

"The associations clearly knew what was going on, and had they objected from the beginning, the Bankruptcy Court may have ruled differently," he said.

Lombardi said he would advise boards and associations to consider negotiating a fair price to extend rights if time grows short for the developer.

“I suspect here that the association chose to stand pat while the facility was being built, hoping that the court would invalidate the amendments and that they would have a free facility, courtesy of the developer. Fortune was indeed on their side, but another association might not be so lucky,” he said.

A takeaway for developers is to ensure sufficient time to fully develop a project, or if more time is needed, to correctly amend the documents, Lombardi said.

“You are not without other solutions if development rights expire,” he explained. “Although the boards in this case were upset with IDC for some reason, there are things you can do such as working with the unit owners to make a few bargains or deals.”

For example, the developer might agree to repair things in the units that are past their warranty.

“I always try to find a compromise,” Lombardi said, noting that any alternative likely would achieve a better result for the developer than what happened in the IDC case.

Charles D. Blackman and William R. Grimm, attorneys for the associations, did not respond to requests for comment.

Expired development rights

In 1988, Globe Manufacturing Co. recorded a declaration of condominium with respect to land on Goat Island, and through an amendment reserved the right to develop a parcel known as the “reserved area.” Those development rights were to expire if not exercised by Dec. 31, 1994.

Globe assigned its development rights to IDC, and then to IDC Properties.

From April to December 1994, IDC Properties introduced multiple amendments to the declaration, seeking to extend the expiration date of the development rights. Several condominium associations, including the parties in the 1st Circuit appeal, Capella South Condominium Association and Goat Island South Condominium Association, questioned the validity of the amendments, and the issue was unsettled for years.

Despite the ongoing dispute over the development rights, in late 1997 and early 1998, IDC Properties spent approximately \$3 million to construct a high-end banquet facility, the Regatta Club, in the reserved area.

There was no evidence indicating that the associations attempted to halt construction.



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Clambakes, another IDC entity, entered into a 20-year lease with IDC Properties and began to operate the club for event hosting and catering services in 1998.

In 1999, the associations sued IDC and IDC Properties in state court, alleging that the companies failed to exercise development rights before the expiration date and that fee simple title to the reserved area had vested in the condominium unit owners. Clambakes was not involved in the litigation.

In 2004 and 2005, the Rhode Island Supreme Court sided with the associations in *America I* and *America II*, holding that they held title to the disputed property and any improvements thereon, including the Regatta Club.

The justices concluded that IDC had invested \$3 million in the club at its own peril since its right to do so was in dispute.

Following those decisions and to stave off being ejected, IDC Clambakes filed for Chapter 11 bankruptcy in 2005 and vacated the premises soon thereafter. Clambakes entered into a plan of reorganization under which its creditors would be paid in full.

Following litigation in which the associations' claims for trespass were rebuffed, the Bankruptcy Court considered whether IDC had an obligation to pay the fair value for its use and occupancy of the property.

The court found that the associations failed to show an implied-in-fact contract between the parties because there was no evidence of mutual intent. It also denied equitable relief, holding that the benefit the associations conferred on Clambakes was fully offset by the value that the associations gained by being awarded ownership of the Regatta Club.

However, the District Court reversed the Bankruptcy Court's equitable analysis, finding that through the *America* decisions, the Supreme Court established that the associations owned the club since its construction.

From that premise, the District Court rebalanced the benefits received by each party and ordered Clambakes to pay \$2.6 million for its use and occupancy of the Regatta Club during the claim period.

Equitable relief denied

The 1st Circuit affirmed the Bankruptcy and District court holdings that there was no implied-in-fact contract under which Clambakes agreed to pay the associations for the use and occupancy of the club.

"The bankruptcy court properly ... found that the associations had failed to show evidence of a meeting of the minds," Lynch wrote. "The record lacked evidence that the associations ever requested a rent payment from Clambakes or that Clambakes ever made a rent payment to the associations. There was no evidence of mutual agreement as to duration and scope of occupancy."

However, Lynch agreed with the Bankruptcy Court that equitable relief was not justified.

“Nothing in the [state Supreme Court] decisions suggests that they should be read as diminishing the bankruptcy court’s broad equitable authority ...,” she wrote. “We do not read the *America* decisions as tying the hands of the Bankruptcy Court in deciding whether the equities of this case weigh in favor of additional relief for the associations.”

From there, Lynch reviewed the facts of the case, noting that Clambakes paid more than \$550,000 to improve the building and made rental payments to IDC Properties of over \$1.1 million. The associations, in turn, received a free building that collectively cost IDC Properties and Clambakes roughly \$3.55 million to build and improve.

“It was by no means unreasonable not to require Clambakes to also pay the associations for use of the building,” she wrote. “It is undisputed that the associations did not contribute a penny toward construction.”

Even assuming that Clambakes knew that title to the Regatta Club was in dispute, that knowledge was insufficient to withhold credit to Clambakes for its expenses and effort in improving upon the club structure, the 1st Circuit concluded.

CASE: [*In re: IDC Clambakes, Inc.*, Lawyers Weekly No. 01-072-17](#)

COURT: 1st U.S. Circuit Court of Appeals

ISSUE: Did a condominium association have a right to equitable relief for a developer’s occupation and use of a banquet facility built under an invalid exercise of development rights?

DECISION: No