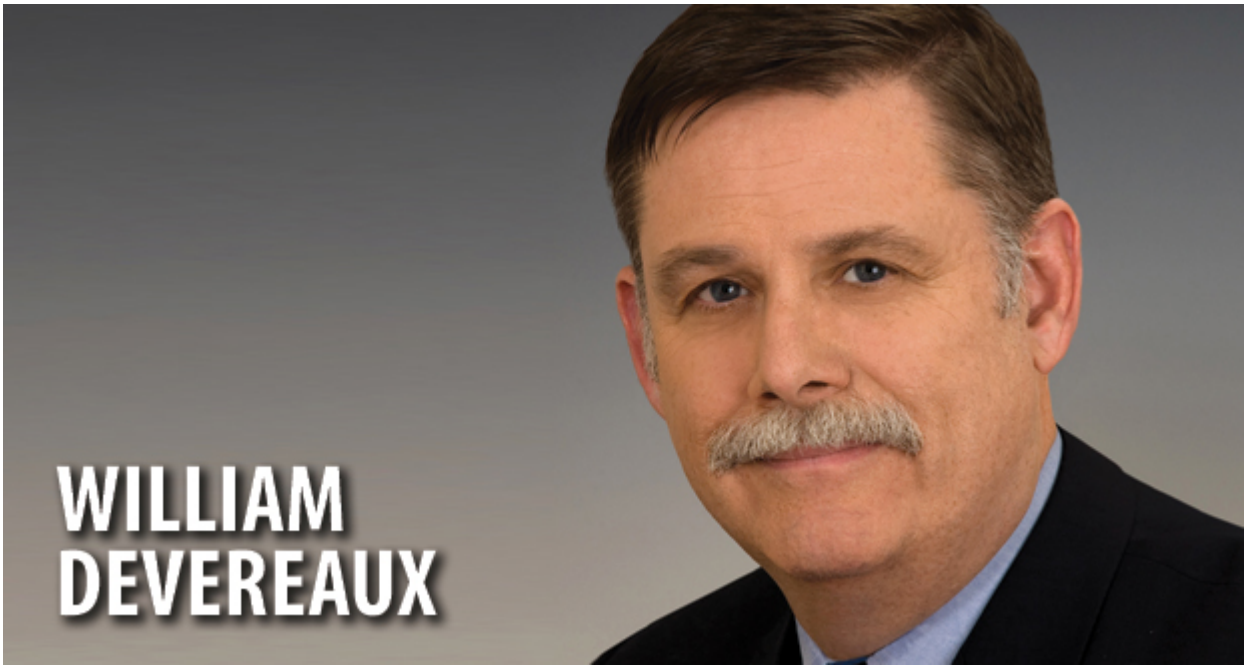
RHODE ISLAND LAWYERS WEEKLY

Condo owners denied payment for unauthorized development

Implied consent theory of compensation fails

By: Pat Murphy June 19, 2014



Condominium associations on Goat Island were not entitled to compensation for the seven-year occupation and use of association property by the operators of a banquet hall built under an invalid exercise of development rights, a U.S. Bankruptcy Court judge has determined.

The condo associations argued that Rhode Island law authorized compensation under an implied consent theory.

Judge Melvin S. Hoffman disagreed and denied the associations' creditor claims in the Chapter 11 bankruptcy case of IDC Clambakes, Inc., which had operated the banquet hall.

"I find that in the circumstances of this contested matter the Associations' implied consent to Clambakes' use and occupancy of the Reserved Area does not give rise to an obligation by Clambakes to pay for the use and occupancy thereof," Hoffman wrote.

The 28-page decision is *In re: IDC Clambakes, Inc.*, Lawyers Weekly No. 53-004-14. The full text of the ruling can be found at rilawyersweekly.com.

‘Property is property’

William P. Devereaux, who represented IDC Clambakes, called the case “a treatise on what is consent between corporate entities, what is trespass, and how equity factors in.”

Devereaux, of Pannone, Lopes, Devereaux & West in Providence, said the judge “hit the nail on the head” in ruling that the condominium associations had not established their entitlement to compensation.

A key factor was that the associations never objected when the banquet hall was being constructed in the 1990s, he said.

“We put in evidence that, not only were the condominium associations on notice, but that they consented to the occupation because they never challenged it in all the years the facility was being operated,” Devereaux said. “The courts found that they had essentially consented to my client’s occupation of the property, so it wasn’t a trespass.”

Frank A. Lombardi, a condominium law attorney at Goodman, Shapiro & Lombardi in Lincoln, said he was not completely comfortable with the bankruptcy judge’s conclusion that the equities favored IDC Clambakes simply because the condo associations ended up owning the $3.5 million banquet facility free and clear.

“You can say the associations received this beautiful facility that is going to generate income for the foreseeable future,” Lombardi said. “But property is property. You can’t use my property and not pay for it.”

Otherwise, Lombardi said, he found little fault with the analysis in the ruling.

“On a quasi-contractual basis, all parties knew what was going on, all parties appreciated the benefit,” he said. “In Rhode Island, under [the theory of quasi-contract], there are equities involved, and the Bankruptcy Court [weighed the fact] that the associations received the benefit of a $3.5 million facility with a stream of income.”

Providence attorney Charles D. Blackman, who represented the condo associations, did not respond to requests for comment prior to deadline.

Goat Island banquet facility

The creditors in the case were four condo associations whose members were the owners of what had been a parcel of undeveloped condominium property on Goat Island, known as the “Reserved Area.”

In 1998, an affiliate of IDC Clambakes completed construction of the Regatta Club, a high-end banquet hall located on condominium property. IDC Clambakes began operating the banquet hall under a 20-year lease with its affiliate.

The construction of the banquet hall was supposed to have occurred in accordance with development rights transferred to IDC Clambakes' affiliate.

However, while the facility was being constructed, the associations began contesting in state court whether the developments rights had been exercised in a timely manner. Those lawsuits involved affiliates of IDC Clambakes, but not the banquet hall operator directly.

Moreover, there was no evidence that the associations ever challenged the building permit for the Regatta Club, or otherwise directly challenged its operation.

In 2005, the Rhode Island Supreme Court ultimately decided that the development rights to the property expired without being properly exercised and that the individual condo unit owners owned the Reserved Area and any improvements thereon, including the Regatta Club.

To stave off being ejected, IDC Clambakes filed for Chapter 11 bankruptcy. After operating the banquet hall for several months under a consent order issued by the Bankruptcy Court, the company ceased operations and abandoned the facility.

The associations filed creditor claims seeking $3.5 million for IDC Clambakes' "trespass" for the period between 1998 and 2005. The Bankruptcy Court disallowed the associations' claims, ruling that they had impliedly consented to IDC Clambakes' use and occupancy of the Reserved Area for the claim period.

The 1st U.S. Circuit Court of Appeals affirmed that ruling, but remanded to the Bankruptcy Court to decide whether, under Rhode Island law, the associations' implied consent gave rise to an obligation on the part of IDC Clambakes to pay the fair value for the use and occupancy of the property.

Implied contract?

On remand, Hoffman rejected the associations' argument that, because Rhode Island law generally presumes an obligation to pay for use and occupancy of the land of another, IDC Clambakes had the burden to show that the associations consented to use of the Reserved Area for free.

"The Associations have failed to cite any Rhode Island law which supports either the proposition that in the context of a trespass action implied consent includes a presumed obligation to pay fair value absent proof of contrary intent or that it is Clambakes' burden to prove that the Associations impliedly consented to its use of the Reserved Area for free," Hoffman wrote.

The judge said the law "imposes an obligation to pay fair value for the use and occupancy of the land of another but the right to recover must be based on some independent cause of action such as unjust enrichment, the elements of which the party seeking payment must prove."

Hoffman interpreted the 1st Circuit's remand order as directing him to examine the associations' claims under the Rhode Island law of implied contract.

"[U]nder that law it is the Associations' burden, as the party alleging the existence of an implied contract, to prove the elements of either an implied-in-law contract or quasi-contract," Hoffman wrote.

The essential elements of an implied-in-fact contract are mutual agreement and intent to promise, both elements being "implied from the facts," he said.

Hoffman proceeded to conclude that the associations failed to establish the elements of an implied-in-fact contract, noting the absence of evidence that the associations ever requested a rent payment from IDC Clambakes or that the banquet hall operator ever made a rent payment to the associations.

"There is no evidence of mutual agreement as to duration and scope of occupancy," Hoffman wrote. "In short, there are no facts in the record that would suggest the existence of mutual intent on the part of the Associations and Clambakes to enter into an agreement for the use and occupancy of the Reserved Area."

The judge likewise found that the evidence failed to support the existence of a quasi-contract, which requires proof that the plaintiff conferred a benefit on the defendant, the defendant appreciated the benefit and, under the circumstances, "it would be inequitable for the defendant to retain such benefit without payment of the value thereof."

The judge concluded that the associations' quasi-contract claim failed when weighing the equities in the case given that the associations' members obtained ownership of the banquet hall with its stream of income "sluicing along" at a rate of at least $240,000 a year.

"In short, the Associations have not carried their burden of proving that they conferred a benefit on Clambakes under such circumstances that it would be unjust for Clambakes to retain the benefit without paying the fair value thereof," Hoffman said.

RILW CASE: *In re: IDC Clambakes, Inc.*, Lawyers Weekly No. 53-004-14

COURT: U.S. Bankruptcy Court

ISSUE: Do condominium associations have a right to compensation under an implied consent theory for the seven-year occupation and use of association property by the operators of a banquet hall built under an invalid exercise of development rights?

DECISION: No