

**Moore v Ruback's Grove Campers' Assoc., Inc.**

2009 NY Slip Op 33411(U)

May 20, 2009

Supreme Court, Saratoga County

Docket Number: 2009-0488

Judge: Frank B. Williams

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This opinion is uncorrected and not selected for official publication.

STATE OF NEW YORK

SUPREME COURT - COUNTY OF SARATOGA

ORIGINAL

ROBERT MOORE and DENNIS BELLONE,

Petitioners,

-against-

**DECISION AND ORDER**

RUBACK'S GROVE CAMPERS'  
ASSOCIATION, INC.,

Index No. 2009-0488  
RJI No. 45-1-2009-0163

Respondent.

**APPEARANCES:**

**ENGLERT, COFFEY, MC HUGH & FANTAUZZI**  
(Dennis M. Englert, Esq., of Counsel)  
Attorneys for Petitioner Robert Moore

**JOHN W. SUTTON, ESQ.**  
Attorney for Respondent

SARATOGA COUNTY  
CLERK'S OFFICE  
BALLISTON SPA, NY

2009 MAY 28 AM 11:50

FILED

**FRANK B. WILLIAMS, J.**

Petitioner and respondent entered into a lease for property known as and located at Lot 105 in the Ruback's Grove Campground, Town of Galway, Saratoga County, New York. The lease at Paragraph 8 states: "That neither party will close or obstruct any road now in use by the lessee of any lot or any road shown upon said map, except that the first party may maintain gate on road leading to camp grounds." Petitioner's allege that the Board of Directors of the Ruback's Grove Campers Association decided that effective January 1, 2009, a new lock would be set in place on the gate across the access road to the campground.

[\* 2]

The new Board decided that keys would not be issued to individual leaseholders such as petitioner. The Board also decided not to plow the roads in the winter.

Plaintiff brings this order to show cause to enjoin respondent, its successors and assigns, its agents, representatives, employees and/or servants to provide a key to the petitioner to unlock any gate the respondent may place across the access road and entry into Ruback's Grove, and permanently enjoining the respondent, its successors and assigns, its agents, representatives, employees and/or servants from blocking, barricading, or otherwise denying motor vehicle access by the petitioner to his home, and the roadways of Ruback's Grove leading thereto. Petitioner claims that he has improved his camp and intends to live on the premises year round. He claims that other lessees have lived there year round as well.

Respondent claims that it has been the policy of Ruback's Grove to place a winter lock on the property for approximately 30 years. Members of Ruback's Grove have been told for years that snow plowing was not allowed and such a rule appears in the records of Ruback's Grove from 2001. In July of 2008, petitioner Bellone sent a letter to the President of Ruback's Grove withdrawing his request for year round access.

The motion is granted and the respondent, its successors and assigns, its agents, representatives, employees and/or servants are hereby permanently enjoined from blocking, barricading, or otherwise denying motor vehicle access by the Petitioner to his home, and the roadways of Ruback's Grove leading thereto. Paragraph 8 states "That neither party will close or obstruct any road now in use by the lessee of any lot or any road shown upon said

map, except that the first party may maintain gate on road leading to camp grounds." There are no restrictions set forth in the lease permitting respondent to block the roads during certain months or seasons. The lease simply provides that the roads may not be blocked by either party to the lease. Additionally, there are no provisions in the lease stating that the property may only be used during certain months or seasons.

Courts "have long adhered to the sound rule in the construction of contracts that where the language is clear, unequivocal and unambiguous, the contract is to be interpreted by its own language" (*R/S Assoc. v New York Job Dev. Auth.*, 98 NY2d 29). Extrinsic and parol evidence is not admissible to create an ambiguity in a written agreement which is complete and clear and unambiguous upon its face" (*R/S Assoc. v New York Job Dev. Auth.*, 98 NY2d 29).


The lease is clear; neither party may block the road. The permanent injunction is granted.

This decision shall constitute the order of the court. Any matters not herein decided are denied.

DATED: May 20, 2009  
Saratoga Springs, New York

2009 MAY 28 AM 11:50  
SARATOGA COUNTY  
CLERK'S OFFICE  
BALLSTON SPA, NY

ENTERED

  
HON. FRANK B. WILLIAMS  
JUSTICE OF THE SUPREME COURT

ENTERED  
Kathleen A. Marchione  
  
Saratoga County Clerk

Papers Considered:

1. Verified Petition of Robert Moore signed by Gregory E. Schaaf, Esq., and Robert Moore, and dated February 9, 2009, with annexed exhibits.
2. Affidavit in Opposition by John W. Sutton, Esq., dated February 17, 2009, with annexed exhibits.
3. Reply Affidavit of Robert A. Moore, dated February 23, 2009.
4. Oral Argument on the Motion on February 18, 2009 by Dennis Englert on behalf of Plaintiff and John Sutton on behalf of Respondent.

The court is filing the original decision and order together with original papers in the Saratoga County Clerk's Office. Attorneys for petitioner to comply with CPLR 2220.