



## Slips Happen - A Reminder on the Importance of Defining Terms



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The New York Court of Appeals recently delivered an opinion in *Skaneateles Country Club v. Cambs* (unpublished at this time) that upheld an at-will termination of boat slip license. In 1999, Skaneateles Country Club (“SCC”) built 80 boat slips on Skaneateles Lake for use by its members. One member, Olivia Cambs, entered into an “Assignment Agreement” with SCC, paid the required \$4,500 initial capitalization payment, and agreed to pay an annual maintenance fee – all in exchange for the right to use and occupy a boat slip assigned by SCC.

The assignment agreement included a provision allowing participants to make a legacy transfer of the slip to qualifying offspring provided the assigning member was in good standing with SCC. After more than 25 years after Cambs entered in the assignment agreement, following an unrelated dispute with SCC in which Cambs successfully pursued the club for overcharging her maintenance fees, SCC filed a declaratory judgment action seeking a determination that the agreement was a license terminable at will by SCC. The New York Supreme Court granted SCC’s motion, but it was later reversed by the New York Appellate Division. The case was then appealed to the New York Court of Appeals, New York’s highest court (the “Court”).

In what was an open and shut case for the majority of the Court, the question before the justices was whether SCC improperly terminated Olivia Cambs’ access to and use of the boat slip she was granted pursuant to the assignment agreement with the club. After stating that the parties had previously agreed that the agreement in question was a license, the Court cited precedent holding that a license is a revocable privilege that may be terminated at will by the licensor. Finding nothing in the agreement which limited SCC’s ability to terminate it at will, the Court reversed the Appellate Division’s finding that the agreement was not terminable at will, and the case was remanded back to the Supreme Court. As an aside, the Court briefly acknowledged that there are circumstances that would make an ordinary license irrevocable; however, the Court did not find sufficient evidence that any such circumstances were present in this case.

Justice Rivera, authoring a by-comparison lengthy dissent, put forward two arguments to counter the majority: first, the language of the assignment agreement, which did not indicate the agreement was a license, should have taken precedence over the label on which the parties had previously agreed; and second, even if the agreement was a license, there was sufficient evidence to conclude the license was irrevocable.

For his first argument, Justice Rivera cited a well-known contract interpretation rule stating that the terms of the agreement should control. He then pointed out that the agreement was titled "Assignment Agreement" and that it never mentions granting a license. Rather, while referring to SCC as the assignor and Cambs as the assignee, the agreement assigns the exclusive use and occupancy of the boat slip to Cambs, subject only to the terms and conditions set forth in the agreement. While the assignment agreement did enumerate circumstances allowing the agreement to be terminated, including termination by the assignee or termination as a result of the assignee no longer being a member of SCC, nothing in the agreement permitted SCC to unilaterally terminate without cause. Reminding the Court that it is limited by the four corners of the agreement, Justice Rivera opined that in granting SCC the right to terminate the assignment agreement at will wrongly added a term which the parties chose to exclude.

Further on this same argument, Justice Rivera stated that the Court cannot imply a right that would be contrary to the intent of the agreement as written. Here, Cambs was granted the assignment in exchange for partially funding the construction of the slips (and of course the annual maintenance fee). Under the assignment, Cambs was required to (a) maintain her membership with SCC in good standing; (b) adhere to the rules and policies set forth by SCC; (c) comply with applicable law; and (d) pay the annual maintenance fee. Without Cambs (and other members opting to help capitalize the project), SCC presumably would not have had the adequate funding to build the slips. Moreover, the existence of the right to a legacy transfer inferred that the assignment was not meant to permit an at-will termination by SCC. Thus, permitting SCC to unilaterally terminate the assignment undermines the structure and incentives of the agreement.

After outlining his belief that the agreement was not a license by its terms, Justice Rivera continued on to his second argument, which was that even if the agreement is a license, the circumstances in this case made the license irrevocable. He first looked at the conduct of SCC, who terminated the license solely in response to Cambs' continued efforts to receive a reimbursement for excessive maintenance charges. Quickly stating that this conduct would hardly be deemed a good faith response, Justice Rivera moves on his second point – that Cambs detrimentally relied on having continued, uninterrupted use of the boat slip. In reliance on continued use of the slip, Cambs (a) purchased a boat (and repurchased a separate boat after the first boat caught fire), (b) maintained insurance, and (c) invested maintenance fees each year to ensure future stability of the slip. For Justice Rivera, SCC's lack of good faith, coupled with Cambs' reliance on continued access to the boat slip, should have made the license irrevocable.

Given the reasoning for the majority's decision in this case, it is a reminder that, in codifying documentation, explicitness is not only preferred but necessary. The decision here is an example that the common law sometimes trumps the plain language within the four corners of a document absent sufficient specificity to

dispel such analysis, application and determination. It remains to be seen whether the dissent will one day prevail as the majority opinion given similar facts and the passage of time.