

COMMONWEALTH OF MASSACHUSETTS

SUPREME JUDICIAL COURT

PLYMOUTH COUNTY

DAR NO.: _____
APPEALS COURT NO.: 2022-P-0394

Erik Tenczar and Athina Tenczar,

Plaintiffs/Appellees,

v.

Indian Pond Country Club, Inc.

Defendant/Appellant.

**ON APPEAL FROM A JUDGMENT OF THE PLYMOUTH SUPERIOR
COURT**

**APPELLANT, INDIAN POND COUNTRY CLUB, INC.'S,
APPLICATION FOR DIRECT APPELLATE REVIEW**

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Dated: May 19, 2022

CORPORATE DISCLOSURE STATEMENT

Pursuant to S.J.C. Rule 1:21 Defendant/Appellant,
Indian Pond Country Club, Inc., states that it does
not have a parent company and that no publicly held
company owns 10 percent or more of its stock.

REQUEST FOR DIRECT APPELLATE REVIEW

Pursuant to Mass. R. App. P. 11(a), the defendant/appellant, Indian Pond Country Club, Inc., respectfully requests that the Supreme Judicial Court grant direct appellate review. Defendant asserts that its appeal presents matters of first impression or novel questions of law and questions of such public interest that justice requires a final determination by the full Supreme Judicial Court for the reasons stated below.

STATEMENT OF PRIOR PROCEEDINGS

The present action was brought by the plaintiffs/appellees, Erik and Athena Tenczar, against the defendant/appellant, Indian Pond Country Club, Inc., seeking equitable relief and monetary damages. Plaintiffs alleged that, after purchasing a home in 2017, golfers hit errant golf balls onto their property, sometimes striking their home, breaking windows and causing other property damage. Plaintiffs sought preliminary injunctive relief in the Trial Court, seeking an order prohibiting the operation of

the golf course in a manner resulting in errant golf balls entering their property. The Court denied the preliminary injunction motion. Upon appeal to the single Justice of the Appeals Court, the Trial Court's decision was upheld.

This case was then tried in Brockton Superior Court between November 29 and December 6, 2021. On November 30, 2021, the plaintiffs filed what was labeled a "motion in limine" seeking a ruling from the Court that the defendant did not have a right to operate the golf course in a manner that resulted in errant gold balls either landing in their improved yard or striking their home. After initially denying this motion on November 30, 2021, the Court then, prior to the close of evidence, allowed the motion in limine, ruling that to the extent that the defendant had an easement on the defendant's property such easement constituted only of the right of golfers to retrieve golf balls on the unimproved portions of Plaintiffs' property. The Court also denied defendant's motions for directed verdict submitted at

the close of plaintiffs' evidence and again at the close of all evidence.

The case was then submitted to the jury on the trespass claim. The jury returned a verdict awarding the plaintiffs \$100,000 for property damage and \$3.4 million for emotional distress damage. Motions for judgment notwithstanding the verdict and for a new trial/remittitur were denied on March 3, 2022. A Notice of Appeal was filed on March 15, 2022. The Appeals was then docketed in the Appeals Court on April 28, 2022.

STATEMENT OF FACTS RELEVANT TO THE APPEAL

Over the years prior to 1997, High Pines Corporation and Frederick M. Tonsberg ("Developer") acquired approximately 1,000 acres of wooded land in Kingston, Massachusetts. The Developer then sought approval of a 134-lot residential subdivision and a special permit to construct, operate and maintain a golf course in the center of the proposed subdivision.

After obtaining a special permit to build the golf course and Planning Board subdivision approval

for the 134-lot residential subdivision, the Developer executed and recorded a Declaration of Covenants and Restrictions ("Declaration"), which, in pertinent part, provided that the Developer reserved the right to operate a golf course on all but a few specified lots in the subdivision.¹ A.59-63. After the golf course was substantially constructed, and the golf course lot had been conveyed to Indian Pond Country Club, the Developer then recorded an Amendment to the Declaration of Covenants and Restrictions ("Amendment"), setting forth certain specific easements/covenants relating to the subdivision land. These included the right of golfers to retrieve, on foot, errant golf balls from the unimproved land of lots adjacent to the golf course. A.64-65. In addition, the Amendment imposed specific servitudes on the golf course lots, including a prohibition on swimming pools in backyards, or on the placement or use of any playground equipment in the backyards of golf course lots. Id.

¹ References to the Addendum will be cited as "A." followed by the page number.

After the course had been operating for approximately 17 years, the plaintiffs purchased a home from a builder who had purchased a lot from High Pines Corporation and constructed a home on the lot. The plaintiffs were provided with the Declaration and Amendment, and were aware of the provisions of these documents before buying the house. The plaintiffs asked no one about the pros and cons of owning property adjacent to a golf course, and simply assumed that golf balls would never come on the improved portion of their property.

At trial, the plaintiffs testified that from 2017 to approximately November of 2021, 654 golf balls had come onto the improved portion of their property. The plaintiffs testified that approximately 60 golf balls had hit their house in 2018 through 2021 and that 8 windows had been broken. The plaintiffs testified that they were unable to use their yard during golf season, felt that they were prisoners in their own home, and that their dream home had turned into a nightmare.

Evidence at trial also showed that the golf course had implemented measures in an attempt to reduce the frequency of errant golf balls. The evidence established that golf ball house strikes had been reduced from 30 in 2018 to an average of approximately 10 per year from 2019 through 2021. Plaintiff Erik Tenczar testified at trial that he had a zero tolerance policy and that no golf balls should ever be allowed to come onto the improved portion of this property.

STATEMENT OF ISSUES OF LAW RAISED BY THE APPEAL

The following statement of issues were raised and properly preserved for appeal:

- I. Whether legally recorded documents, specifically a Declaration of Protective Covenants and Restrictions ("Declaration") and Amendment to the Declaration of Protective Covenants and Restrictions ("Amendment") reserved to the Developer of the subdivision as part of a general plan development the right to conduct a golf course on abutting residential properties.
- II. Whether the rights reserved in the Declaration and Amendment are to be construed in the light of the attendant circumstances at the time the Declaration and Amendment were executed and recorded.
- III. Whether the Trial Court committed reversible error in only fixating on the meaning of one

sentence in the Amendment in ruling that the rights reserved under the Declaration and Amendment concerning errant golf balls were limited to the unimproved portions of the abutting residential lots, and that there was no right or easement to operate the golf course on properties abutting the golf course.

- IV. Whether the entry of errant golf balls onto property abutting the golf course constituted a trespass in light of the Declaration and Amendment.
- V. Whether the Trial Court committed reversible error in consistently changing its position as to whether the meaning of the Declaration and Amendment is matter of law for the Court to decide or whether it was a matter for the jury.
- VI. Whether the Trial Court committed reversible error by instructing Defendant's counsel not to argue the meaning of the Declaration and Amendment in Defendant's closing argument to the jury, and then instructing the jury that they could consider the language of one section of the Amendment concerning golf balls.
- VII. Whether an award of 3.4 million dollars to the owners of property abutting the golf course for emotional distress was excessive as a matter of law in the absence of:
 - 1.) any evidence of any physical injuries; and
 - 2.) any evidence of symptoms constituting an objective manifestation of physical harm.
- VIII. Whether the Trial Court committed reversible error in allowing the following irrelevant and prejudicial evidence:

1. Evidence concerning an alleged obligation of the Developer to control where houses were constructed on residential lots or an alleged obligation to control the removal of vegetation on residential lots by builders;
2. Evidence concerning the Developer allegedly being a liar and threatening a golf course superintendent providing expert services for the plaintiffs;
3. Testimony as to what the Plaintiffs' expectations were when moving into the property; and
4. Whether the conduct of Plaintiffs' attorney in failing to redact prejudicial information from an otherwise admitted document, is grounds for reversing the jury award.

ARGUMENT²

I. The Declaration and Amendment Created the Dominant Estate's Right to Operate a Golf Course.

After obtaining subdivision approval and being issued a special permit for construction of the golf course, the Developer, in 1999, recorded the Declaration. The Declaration clearly established the dominant and servient estates. Specifically, the one

² For purposes of this Application only, Defendant's argument will primarily focus on the issues presented which give rise to matters of first impression or novel questions of law.

large lot in the center of the golf course was the dominant estate. The Declaration reserved, inter alia, the following rights for the dominant estate:

"WHEREAS, the Developer, in addition to the creation of a residential community, intends to create, operate and maintain a golf course with country club facilities on a portion of the subject premises, for the sole and exclusive benefit of the Developer, its assigns, and its members and guests...

20. Reservation of Rights by Developer.

Developer expressly reserves and retains for itself, its successors and assigns, **THE RIGHT TO CREATE, OPERATE AND MAINTAIN A GOLF COURSE AND COUNTRY CLUB FACILITIES, INCLUDING BUT NOT LIMITED TO, MAINTENANCE AND IRRIGATION FACILITIES, PARKING AREAS, RECREATION, FITNESS AND GOLF TEACHING FACILITIES, ON ALL PORTIONS OF THE LAND AS SHOWN ON INDIAN POND ESTATES IV PLAN,** other than those expressly subject to this Declaration."³

A.59,63. (emphasis supplied.)

The Declaration granted the dominant estate the right to operate and maintain a golf course. At the time this right was created, every right necessary for

³ Specifically, Lots 4-44 through 4-71, Lots 4-117 through 4-134, Lots 4-1 and 4-2, were excluded from the golf course easement. Plaintiffs' property, Lot 4-80, was not excluded and therefore was subject to the Developer's right to create, operate, and maintain a golf course. A.59.

its enjoyment was included by implication. Sullivan v. Donohoe, 287 Mass. 265, 267 (1934); Post v. McHugh, 76 Mass. App. Ct. 200, 206 (2010). It is not legally necessary that easement language specifies the entire scope of the easement. World Species List v. Reading, 75 Mass. App. Ct. 302, 306 (2009).

As the dominant estate, the golf course's right to operate a golf course was and remains superior to the servient estate owners' property interests. World Species List v. Reading, 75 Mass. App. Ct. 302, 310 (2009). Under longstanding Massachusetts easement law, the effect of an easement is to subject the servient owner's estate "to the burden of a restriction from doing upon it what he otherwise could do, and an obligation to suffer others to use it in a manner which he might otherwise prevent" Commercial Wharf East Condominium Ass'n v. Waterfront Parking Corp., 407 Mass. 123, 134 (1990) quoting Owen v. Field, 102 Mass. 90, 103 (1869).

Accordingly, the original Declaration reserved the right to operate a golf course on all lots of the

subdivision. This reservation created a valid easement appurtenant to the land upon which the actual golf course would be constructed. See Commercial Wharf East Condominium Ass'n, 407 Mass. at 135-136 (1990). All rights necessary to the enjoyment of the easement were included by implication. Sullivan v. Donohoe, 287 Mass. 265, 267 (1934). Undisputed expert testimony at trial established that errant golf shots are an inherent consequence of operating a golf course and therefore the right to have errant shots going on the properties adjoining the golf course was necessary for the enjoyment of the easement to operate a golf course and included by implication.⁴

II. The Amendment Does not Limit the Rights Reserved Under the Original Declaration.

In January of 2001, after construction of the golf course was substantially completed, the Developer

⁴ In DeSarno v. Jam Golf Management, LLC, 295 Ga. App. 70 (Ga. App. 2008), the Georgia Appeals Court noted that errant golf balls are a natural consequence of play and cited Ellery v. Ridge Club, 2005 Ohio 1873 (Ohio Ct. App. 2005) for a synopsis of cases stating this proposition. The DeSarno Court held that an easement which allowed golf balls to go on adjacent lots included the right for balls to go on all portions of the lots, including the house. Id. at 71.

recorded the Amendment. The Amendment provided further details as to what the existing easement burdened the servient estates with and not being able to do what the landowners could otherwise do. Specifically, no back yard swimming pools were allowed, no swing sets were allowed, no play sets were allowed, no outdoor work in the yard was permitted on weekends or at any other time that might interfere with the operation of the golf course. These restrictions applied without limitation to both improved and unimproved portions of the adjacent lots.

In addition, the Amendment provided specificity to the obligation of the servient estate to suffer others to use their property in a manner which the owner must otherwise prevent. Specifically, the Amendment provided as follows:

"C. The perpetual right and easement for the sole and exclusive use of **providing reasonable foot access** for golfers to retrieve errant golf balls on unimproved areas of such lots."

A.64.(emphasis supplied.)

This language provided two limitations upon the burden imposed on golf course lots. First, golfers

could only enter the property on foot, so there would be no driving of golf carts on the adjoining properties. Second, foot traffic onto the property was limited to the unimproved portion of the lots, making it clear that the golfers themselves could not enter into the improved portions of the yard in search of a golf ball. The provision in the Amendment relating to the retrieval of golf balls was directed to feet on the ground and not balls in the air. The Developer's reservation of the right to operate a golf course was permissible and not limited by the Amendment. See Commercial Wharf East Condominium, 407 Mass. at 135-36 (1990).

III. The Trial Court Erred by Interpreting the Easement Documents Without Considering the Attendant Circumstances and by Focusing Solely on One Section of the Amendment.

The principles governing interpretation of a deed are similar to those governing contract interpretation. Sullivan v. O'Connor, 81 Mass App. Ct. 200, 204 (2012). In interpreting a contract, the Court should look at the contract as a whole. See Star v. Fordham, 420 Mass. 178, 190 (1995). A legal

document should be construed to give effect to the intention of the grantor as ascertained from the language of the whole instrument, considered in light of the attending circumstances. Schroeder v. Danielson, 37 Mass App. Ct. 450, 453 (1994) quoting Harrison v. Marcus, 396 Mass. 424, 429 (1985). The scope of an easement granted in general terms is determined by the language of the grant construed in light of the attending circumstances. Labounty v. Vickers, 353 Mass. 337, 344 (1967). Rights established by and the servitudes imposed by an easement cannot be determined by isolating words and interpreting them as though they stood alone. See Commissioner of Corps and Taxn. v. Chilton Club, 318 Mass. 285, 288 (1945).

In the present case the Court wrote a two-sentence decision quoting one subsection of the Amendment dealing with golfers' rights to retrieve their golf balls. The Court gave no consideration to the attendant circumstances at the time of the Declaration or Amendment. By doing so the Court effectively reversed the status of the golf course and

adjacent lot owners by giving the servient lot owners the right to limit the rights of the dominant estate by deciding how much of their lots to improve.⁵

IV. The Jury's Award of 3.4 Million Dollars for Emotional Distress Damages Were Excessive as a Matter of Law.

Under Massachusetts law, the practical test to apply in ruling on whether damages awarded are excessive is whether the award falls somewhere within the necessarily uncertain limits of just damages or whether the size of the verdict so shocks the sense of justice as to compel the conclusion that the jury was influenced by partiality, prejudice, mistake or corruption. Labonte v. Hutchins & Wheeler, 424 Mass. 813, 824 (1997). Moreover, it is an error of law if the damages awarded were greatly disproportionate to the injury proven or represented a miscarriage of

⁵ The trial judge further ignored the prior well written decision by the Court (Buckley, J.) on Plaintiffs' motion for preliminary injunction. In denying plaintiffs' motion, the court took into consideration the attendant circumstances and held that the legal documents clearly demonstrated an express reservation of the right to create and operate a golf course within the subdivision as part of a common scheme. A. 43.

justice. Id. citing doCanto v. Ametak, Inc., 367 Mass. 776, 787 (1975).

In order to recover damages for negligent infliction of emotional distress, a plaintiff must prove objective manifestation of physical harm. Sullivan v. Boston Gas Co., 414 Mass. 129 (1993); Gutierrez v. Massachusetts Bay Transportation Authority, 437 Mass. 396, 413 (2002). There is no good reason why a different rule should apply for emotional distress damages for a claim predicated on trespass.⁶

In the present case the Tenczars offered no testimony of symptoms constituting an objective manifestation of physical harm. No evidence was

⁶ In Fenton v. Quaboag Country Club, Inc., 353 Mass. 534 (1968) the Court affirmed a master's report which, inter alia, awarded plaintiffs \$2650 for their distress and discomfort for a period of 14 years for a continuing nuisance and trespass of golf balls entering plaintiffs' property. Id. at 538. However, the cases cited by the Fenton Court specifically concerned nuisance claims. The only other case Defendant is aware of concerning emotional distress damages predicated upon trespass is Meagher v. Driscoll, 99 Mass. 281 (1868). The Court found trespass damages appropriate taking into consideration factors such as willful disregard, gross carelessness, willful mischief, and wantonness in unlawfully disinterring the body of Plaintiff's child. Id. at 285. None of these factors are present in this case.

offered of tension or migraine headaches, concentration or reading problems, sleeplessness, upset stomach, nightmares, or gastrointestinal problems found sufficient in Sullivan v. Boston Gas Co., 414 Mass. 129, 137 (1993). No evidence was presented as to uncontrolled crying spells, headaches, loss of concentration, depression, anxiety, nightmares, or loss of a sexual relationship with a spouse found sufficient in Bresnahan v. McCauliff, 47 Mass. App. Ct. 278, 284-85 (1999). No evidence was offered of repeated nightmares, high anxiety, intrusive thoughts, racing hot flashes, and feeling of detachment held sufficient in Adams v. Cong Auto Ins., 90 Mass. App. Ct. 761, 770 (2016).

The Tenczars presented no evidence that they had either sought or received any counseling or medical treatment of any kind. No testimony was presented to any diminution or problem with respect to the ability to work or concentrate. The Tenczars offered no testimony as to how their ability to do anything at any location other than their house had been adversely

effected. The Tenczars offered no testimony from any friends or relatives as to any change in their behavior.

The Tenczars' emotional distress claim, if sufficient to warrant any award, is of modest value given the absence of medical testimony or of symptoms objectively manifesting physical harm. The jury award of 3.4 million is grossly excessive and it would be a denial of justice to let it stand.

**STATEMENT OF REASONS WHY DIRECT APPELLATE REVIEW IS
APPROPRIATE**

Defendant Indian Pond Country Club asserts that the following reasons establish a public policy interest warranting direct appellate review:

1. The case presents as a matter of first impression in Massachusetts whether the Developer of a common development, including a golf course and a surrounding residential community, can record legal documents reserving the right to build and operate a golf course, including the right to have errant golf shots entering the property of residential lots adjoining the golf course.
2. The foregoing issue is also one where extremely limited appellate case law exists on a nationwide basis. The defendant is aware of only one such case, DeSarno v. Jam Golf

Management, LLC, 295 GA App. 70 (GA. App. 2006).

3. There are numerous interested parties. Approximately 2,763 golf facilities in the United States identify as residential developments. This constitutes approximately 20% of the 14,000 golf facilities with 16,000 courses nationwide, according to the National Golf Foundation.
4. A substantial issue of law is presented as to what rules or guidance should be provided to a jury in assessing purely emotional distress injuries and whether an award of \$3.4 million for such damages where there was no evidence of anyone ever being struck by a golf ball, injured by a golf ball, or seeking medical treatment or counseling for any alleged emotional distress sustained.
5. The present case has received substantial coverage in the media. The Boston Globe, the Garnet newspaper chain and People Magazine have published stories about the case. Local television stations have also reported on the case. Even the BBC and a radio station in Toronto have carried stories about the case. Sports Illustrated and Golf Digest have also printed stories.

CONCLUSION

Based on the foregoing, Defendant/Appellant, Indian Pond Country Club, Inc., respectfully requests that the Supreme Judicial Court GRANT Defendant's application for direct appellate review.

Respectfully submitted,

Defendant/Appellant,
Indian Pond Country Club, Inc.,
By its Attorneys,

/s/ Leon C. Nowicki

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CERTIFICATE OF COMPLIANCE
Pursuant to Rule 16(k) of the
Massachusetts Rules of Appellate Procedure

I, Leon C. Nowicki, hereby certify that the foregoing brief complies with the rules of Court that pertain to the filing of briefs, including, but not limited to:

Mass. R. A. P. 11 (direct appellate review);
Mass. R. A. P. 16 (a)(13) (addendum);
Mass. R. A. P. 16 (e) (references to the record);
Mass. R. A. P. 20 (form and length of briefs;
appendices, and other documents); and
Mass. R. A. P. 21 (redaction).

I further certify that the foregoing brief complies with the applicable length limitation in Mass. R. A. P. 20 because it is produced in monospaced font, Courier New, at size 12, 10.5 characters per inch, and the Argument section consists of not more than 10 pages of text.

Dated: May 19, 2022

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CERTIFICATE OF SERVICE

Pursuant to Mass.R.A.P. 13(d), I hereby certify, under the penalties of perjury, that on May 19, 2022 I have made service of Appellant's Application for Direct Appellate Review upon the attorney of record for each party, or if the party has no attorney then I made service directly to the self-represented party, by the electronic filing system on:

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ADDENDUM

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1883CV00757 Tenczar, Erik et al vs. Indian Pond Country Club, Inc. et al

- Case Type:
- Real Property
- Case Status:
- Open
- File Date
- 07/13/2018
- DCM Track:
- F - Fast Track
- Initiating Action:
- Other Real Property Action
- Status Date:
- 07/13/2018
- Case Judge:
-
- Next Event:
-

All Information Party Judgment Event Tickler Docket Disposition

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[More Party Information](#)**Judgments**

<u>Date</u>	<u>Type</u>	<u>Method</u>	<u>For</u>	<u>Against</u>
12/06/2021	Judgment on Jury Verdict	After Jury Verdict	Tenczar, Athina	Indian Pond Country Club, Inc.

Events

<u>Date</u>	<u>Session</u>	<u>Location</u>	<u>Type</u>	<u>Event Judge</u>	<u>Result</u>
07/24/2018 02:00 PM	Civil B Brockton		Hearing on Preliminary Injunction	Locke, Hon. Jeffrey A	Held as Scheduled
08/22/2018 02:00 PM	Civil B Brockton		Hearing on Preliminary Injunction	Locke, Hon. Jeffrey A	Held - Under advisement
11/15/2018 02:00 PM	Civil B Brockton		Rule 12 Hearing	Moriarty, II, Hon. Cornelius J	Held as Scheduled
02/26/2019 02:00 PM	Civil B Brockton	BRO-Main FL, CR 4 (SC)	Rule 12 Hearing	Chin, Hon. Richard J	Rescheduled
03/27/2019 02:00 PM	Civil C Brockton	BRO-2nd FL, CR 3 (SC)	Rule 12 Hearing	Cosgrove, Hon. Robert C	Rescheduled
05/20/2019 02:00 PM	Civil C Brockton	BRO-2nd FL, CR 3 (SC)	Rule 56 Hearing		Rescheduled
05/20/2019 02:00 PM	Civil A Brockton	BRO-Main FL, CR 5 (SC)	Rule 56 Hearing		Held - Under advisement
05/21/2019 02:00 PM	Civil C Brockton	BRO-2nd FL, CR 3 (SC)	Rule 56 Hearing		Rescheduled
05/19/2020 02:00 PM	Civil C Brockton		Hearing on Preliminary Injunction		Held - Under advisement
08/06/2020 02:00 PM	Civil C Brockton		Final Pre-Trial Conference		Held as Scheduled
12/22/2020 10:00 AM	Civil C Brockton		Rule 56 Hearing		Rescheduled
01/19/2021 09:30 AM	Civil C Brockton		Rule 56 Hearing		Rescheduled
01/26/2021 09:30 AM	Civil C Brockton		Rule 56 Hearing		Decision rendered
04/29/2021 02:00 PM	Civil C Brockton		Final Pre-Trial Conference		Held as Scheduled
07/19/2021 09:30 AM	Civil C Brockton		Mediation Session (ADR)		Canceled
11/09/2021 02:00 PM	Civil C Brockton		Final Trial Conference		Held as Scheduled
11/15/2021 09:00 AM	Civil C Brockton		Jury Trial		Rescheduled
11/29/2021 09:00 AM	Civil C Brockton		Jury Trial		Held as Scheduled
11/30/2021 09:00 AM	Civil C Brockton		Jury Trial		Held as Scheduled
12/01/2021 09:00 AM	Civil C Brockton		Jury Trial		Held as Scheduled
12/02/2021 09:00 AM	Civil C Brockton		Jury Trial		Held as Scheduled
12/06/2021 09:00 AM	Civil C Brockton		Jury Trial		Held as Scheduled
12/13/2021 02:00 PM	Civil C Brockton		Motion Hearing		Held as Scheduled
02/28/2022 10:00 AM	Civil C Brockton		Hearing for Real Estate Attachment		Held as Scheduled
02/28/2022 10:00 AM	Civil C Brockton		Motion Hearing		Held as Scheduled

Ticklers

<u>Tickler</u>	<u>Start Date</u>	<u>Due Date</u>	<u>Days Due</u>	<u>Completed Date</u>
Service	07/13/2018	10/11/2018	90	
Answer	07/13/2018	11/13/2018	123	12/10/2018
Rule 12/19/20 Served By	07/13/2018	11/13/2018	123	08/06/2020
Rule 12/19/20 Filed By	07/13/2018	12/10/2018	150	08/06/2020
Rule 12/19/20 Heard By	07/13/2018	01/09/2019	180	08/06/2020
Rule 15 Served By	07/13/2018	11/13/2018	123	08/06/2020
Rule 15 Filed By	07/13/2018	12/10/2018	150	08/06/2020
Rule 15 Heard By	07/13/2018	01/09/2019	180	08/06/2020
Discovery	07/13/2018	05/26/2020	683	12/06/2021
Rule 56 Served By	07/13/2018	07/01/2020	719	08/06/2020
Rule 56 Filed By	07/13/2018	07/08/2019	360	08/06/2020
Final Pre-Trial Conference	07/13/2018	08/07/2020	756	08/06/2020
Judgment	07/13/2018	07/13/2020	731	12/06/2021
Under Advisement	05/20/2019	06/19/2019	30	06/13/2019
Under Advisement	05/19/2020	06/18/2020	30	02/01/2021
Under Advisement	01/26/2021	02/25/2021	30	02/01/2021
Status Review	12/29/2021	12/06/2024	1073	
Status Review	12/06/2024	01/06/2025	31	
Under Advisement	02/28/2022	03/30/2022	30	
Under Advisement	02/28/2022	03/30/2022	30	

Docket Information

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/13/2018	Attorney appearance On this date Robert W Galvin, Esq. added as Private Counsel for Plaintiff Erik Tenczar		
07/13/2018	Attorney appearance On this date Robert W Galvin, Esq. added as Private Counsel for Plaintiff Athina Tenczar		
07/13/2018	Case assigned to: DCM Track F - Fast Track was added on 07/13/2018		
07/13/2018	Civil action cover sheet filed.	2	
07/13/2018	Demand for jury trial entered.		
07/13/2018	Original civil complaint filed.	1	Image
07/13/2018	The following form was generated: Tracking Order Sent On: 07/13/2018 14:10:27		
07/13/2018	Erik Tenczar, Athina Tenczar's MOTION for appointment of Special Process Server. Kevin Dalton; filed and Allowed Judge: Locke, Hon. Jeffrey A	3	
07/13/2018	Plaintiff(s) Erik Tenczar, Athina Tenczar's Motion for a Preliminary Injunction Judge: Locke, Hon. Jeffrey A	4	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
07/13/2018	Plaintiffs(s) Erik Tenczar, Athina Tenczar's MOTION for Short Order of Notice filed and Allowed returnable 7/24/18 @ 2PM Judge: Locke, Hon. Jeffrey A Applies To: Indian Pond Country Club, Inc. (Defendant); Spectrum Building Co., Inc. (Defendant); Bisceglia, Paul (Defendant)	5	
07/17/2018	One Trial case reviewed by Clerk, case to remain in the Superior Court. Judge: Jubinville, Sarah		
07/24/2018	Event Result:: Hearing on Preliminary Injunction scheduled on: 07/24/2018 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Jeffrey A Locke, Presiding Appeared: Staff:		
07/24/2018	Erik Tenczar, Athina Tenczar's Memorandum of law in support of motion for preliminary injunction	6	
07/24/2018	Indian Pond Country Club, Inc.'s Memorandum of law in opposition to plaintiff's motion for preliminary injunction	7	
07/24/2018	Attorney appearance On this date Leon Nowicki, Esq. added as Private Counsel for Defendant Indian Pond Country Club, Inc.		
07/24/2018	Endorsement on Motion for a Preliminary Injunction (#4.0): Other action taken Matter continued to 8/22/18 at 2:00PM Judge: Locke, Hon. Jeffrey A		
07/26/2018	Notice sent to counsel to appear for continuance of hearing on motion for preliminary injunction on 8/22/18 at 2:00PM in Plymouth	8	
08/02/2018	Attorney appearance On this date Matthew J Dunn, Esq. added as Private Counsel for Defendant Spectrum Building Co., Inc. & Defendant Paul Bisceglia	9	
08/02/2018	Defendants Spectrum Building Co., Inc., Paul Bisceglia's Assented to Motion to extend time for respond to complaint	10	
08/03/2018	Endorsement on Motion for extension of time to respond to complaint (#10.0): ALLOWED Judge: Locke, Hon. Jeffrey A		
08/20/2018	Received from Defendant Indian Pond Country Club, Inc.: Answer to original complaint;	11	Image
08/22/2018	Attorney appearance On this date Jeanne Elizabeth Demers, Esq. added for Defendant Indian Pond Country Club, Inc.	12	
08/22/2018	Matter taken under advisement: Hearing on Preliminary Injunction scheduled on: 08/22/2018 02:00 PM Has been: Held - Under advisement Comments: FTR Hon. Elaine M Buckley, Presiding Appeared: Staff:		
08/22/2018	Defendant's Notice of intent to file motion to dismiss Applies To: Spectrum Building Co., Inc. (Defendant); Bisceglia, Paul (Defendant)	13	
09/25/2018	Defendants Spectrum Building Co., Inc., Paul Bisceglia's Motion to dismiss certain counts pursuant to MRCP 12(b) Counts III and IV, Memorandum of Law in support; Plaintiff's Opposition & Request for Hearing; Defendants Reply Memorandum for their Motion to dismiss; Affidavit of compliance with S. C. Rule 9A	14	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
10/01/2018	Notice sent to parties to Appear on 11/15/18 at 2:00pm re: defts' motion to dismiss (P#14) cc: RG, LN, JD, & MD Sent On: 10/01/2018 10:02:11	15	
10/03/2018	Plaintiff(s) Erik Tenczar, Athina Tenczar's Motion for leave to amend complaint; opposition; reply; aff; cert of service; request for hearing	16	Image
10/04/2018	Second notice sent to counsel to appear for hearing re: motion to dismiss (p#14) and motion for leave to amend complaint (p#16) on 11/15/18 at 2:00PM in Plymouth	17	
10/09/2018	Attorney appearance On this date Anthony J Riley, Esq. added for Plaintiff Erik Tenczar	18	
11/15/2018	Endorsement on Motion for leave to amend complaint (#16.0): ALLOWED Judge: Moriarty, II, Hon. Cornelius J		
11/15/2018	Endorsement on Motion to dismiss (#14.0): ALLOWED as to Count III and IV by agreement Judge: Moriarty, II, Hon. Cornelius J		
11/15/2018	Event Result:: Rule 12 Hearing scheduled on: 11/15/2018 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Cornelius J Moriarty, II, Presiding Appeared: Staff:		
12/10/2018	Defendant's notice to dismiss plaintiff's complaint MRCP 12(b)	19	
12/17/2018	Received from Defendant Indian Pond Country Club, Inc.: Answer to amended complaint;	20	Image
01/09/2019	Defendants Spectrum Building Co., Inc., Paul Bisceglia's Motion to Dismiss Plaintiffs' First Amended Complaint (memorandum of law incorporated); Defendants' reply Memorandum; Affidavit of Erik Tenczar; Plaintiffs' Opposition; Affidavit in Compliance with S.C. Rule 9A; Request for a Hearing; Exhibits Attached	21	
01/10/2019	The following form was generated: Notice to Appear Sent On: 01/10/2019 09:49:55	22	
02/20/2019	Event Result:: Rule 12 Hearing scheduled on: 02/26/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Richard J Chin, Presiding Appeared: Staff: Sarah Jubinville, Assistant Clerk		
02/22/2019	The following form was generated: Notice to Appear Sent On: 02/22/2019 08:26:57	23	
03/27/2019	Event Result:: Rule 12 Hearing scheduled on: 03/27/2019 02:00 PM Has been: Rescheduled For the following reason: Not reached by Court Hon. Robert C Cosgrove, Presiding Appeared: Staff: Melissa McDonald, Assistant Clerk Magistrate		
03/27/2019	The following form was generated: Notice to Appear for Rule 56 motion on 5/21/19 at 2:00p.m. Sent On: 03/27/2019 14:31:57	24	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
04/08/2019	Notice to Appear for Rule 56 Hearing on May 20, 2019 at 2:00pm in Brockton Civil C Session Sent On: 04/08/2019 09:16:52	25	
04/08/2019	Event Result:: Rule 56 Hearing scheduled on: 05/21/2019 02:00 PM Has been: Rescheduled For the following reason: By Court prior to date Hon. Mark A Hallal, Presiding		
05/16/2019	Event Result:: Rule 56 Hearing scheduled on: 05/20/2019 02:00 PM Has been: Rescheduled For the following reason: Transferred to another session Conrod Boone, Presiding		
05/20/2019	Matter taken under advisement: Rule 56 Hearing scheduled on: 05/20/2019 02:00 PM Has been: Held - Under advisement Hon. Maynard Kirpalani, Presiding		
06/13/2019	MEMORANDUM & ORDER: on Defendants' Spectrum Building Co., Inc's and Paul Bisceglia's Motion to Dismiss Plaintiff's First Amended Verified Complaint: For the foregoing reasons, it is hereby ORDERED with respect to defendant Paul Bisceglia that the Motion to Dismiss be ALLOWED with respect to Counts III, IV, V, and VI of the First Amended Verified Complaint. With respect to defendant Spectrum Building Co., Inc., it is ORDERED that the Motion to Dismiss be ALLOWED as to Counts IV and VI but DENIED as to Counts III and V. Judge: Kirpalani, Hon. Maynard	26	Image
06/13/2019	ORDER: on Motion to Dismiss Defendant Paul M. Bisceglia's Motion to Dismiss Plaintiff's First Amended Verified Complaint be ALLOWED with respect to Counts III, IV, V and VI of the first amended verified complaint. It is further Ordered that Defendant Spectrum Building Co., Inc.'s Motion to Dismiss Plaintiff's First Amended Verified Complaint be ALLOWED with respect to Counts IV and VI but is otherwise DENIED as to Counts III and V.	27	Image
06/27/2019	Received from Defendant Spectrum Building Co., Inc.: Answer to amended complaint;	28	Image
06/27/2019	Attorney appearance On this date Meghan E Hall, Esq. added for Defendant Spectrum Building Co., Inc.		
01/27/2020	Attorney appearance On this date Jeanne Elizabeth Demers, Esq. dismissed/withdrawn for Defendant Indian Pond Country Club, Inc.	29	Image
03/20/2020	Defendant Spectrum Building Co., Inc.'s Joint Motion to extend tracking order deadlines	30	Image
03/24/2020	Endorsement on Motion to extend tracking order deadlines (#30.0): ALLOWED as provided in schedule (Gildea,J) Judge: Gildea, Hon. Mark		
05/07/2020	Plaintiff(s) Erik Tenczar, Athina Tenczar's EMERGENCY Motion for a Preliminary Injunction , plaintiffs' memorandum of law in support, affidavit of Athina Tenczar, affidavit of Robert Galvin, Esq.	31	
05/08/2020	Endorsement on Motion for a Preliminary Injunction (#31.0): Other action taken Defendant shall have to 5/15/20 to file a response. Telephone conference shall be held 5/19/20 at 2pm Judge: Kirpalani, Hon. Maynard		
05/08/2020	Opposition to to plaintiffs' filing their renewed motion for preliminary injunction as an emergency motion filed by Indian Pond Country Club, Inc.	32	
05/08/2020	Plaintiffs Erik Tenczar, Athina Tenczar's EMERGENCY Motion for Preliminary Injunction against Defendant Indian Pond Country Club enjoining the defendant, Indian Pond Country Club, Inc. from the continued use of the 15th hole.; Memorandum in support; Affidavit of Athina Tenczar; Affidavit of Robert W. Galvin, ESQ. Exhibits attached	33	Image

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
05/11/2020	Opposition to to plaintiffs filing their renewed motion for a preliminary injunction as an emergency motion filed by Indian Pond Country Club, Inc.	34	
05/18/2020	Indian Pond Country Club, Inc.'s Memorandum in opposition to Plaintiff's second motion for preliminary injunction;	36	
05/19/2020	The following form was generated: Notice to Appear for Final Pre-Trial Conference on 8/6/20 at 2:00p.m. via Teleconference Sent On: 05/19/2020 14:36:41	35	
05/19/2020	Matter taken under advisement: Hearing on Preliminary Injunction scheduled on: 05/19/2020 02:00 PM Has been: Held - Under advisement Comments: FTR via teleconference Hon. Elaine M Buckley, Presiding		
05/26/2020	ORDER AND DECISION ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION: ...For the aforementioned reasons, the plaintiffs Motion for Preliminary Injunction is DENIED. Judge: Buckley, Hon. Elaine M	37	Image
06/11/2020	The following form was generated: Notice to Appear for Final Pre-Trial Conference Sent On: 06/11/2020 11:44:19		
06/15/2020	Notice to the Appeals Court of Interlocutory Appeal Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)	38	
06/15/2020	Notice of docket entry received from Appeals Court ORDER: A trial judge's decision on a preliminary injunction requires "an evaluation in combination of the moving party's claim of injury and its chance of success on the merits." Edwin R. Sage Co. v. Foley, 12 Mass. App. Ct. 20, 25 (1981). When reviewing such a decision, the single justice "focuses on whether the trial court abused its discretion" -- "that is, whether the court applied proper legal standards and whether the record discloses reasonable support for its evaluation of factual questions." Ibid. See Fordyce v. Town of Hanover, 457 Mass. 248, 256 (2010). Thus, the single justice must "exercise special care not to substitute [his or her] judgment for that of the trial court where the records disclose reasoned support for its action." Edwin R. Sage, 12 Mass. App. Ct. at 26. Here, the petitioners have failed to show that the judge committed an error of law or otherwise abused her discretion in denying the request for preliminary injunction. (Hand, J.) *Notice/attest/Buckley, J.	39	Image
06/25/2020	Notice of docket entry received from Appeals Court Please take note that on June 12, 2020, the above referenced matter has been entered on the single justice docket of the Appeals Court.	40	Image
08/06/2020	Joint Pre-Trial Memorandum filed:	40.1	Image
08/06/2020	ORDER: Scheduling Order: After a Final Pretrial Conference, attend by the parties, and notwithstanding the tracking order in this case it is Ordered THAT: 1. All non-expert discovery shall be complete by Oct 6: 3. Summary Judgment Motions shall be served by Nov 6.: 4. Summary Judgment Responses shall be served by Dec 7.; Further orders: Summary Judgment December 22,2020 by zoom by 10am copies sent Aug 19,2020	40.2	Image
08/06/2020	Event Result:: Final Pre-Trial Conference scheduled on: 08/06/2020 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. Valerie A Yarashus, Presiding		
08/19/2020	The following form was generated: Notice to Appear for Rule 56 Hearing via Zoom on 12/22/20 at 10:00AM Sent On: 08/19/2020 10:27:24 Notice Sent To: Robert W Galvin, Esq. Galvin & Galvin, PC 10 Enterprise St Suite 3, Duxbury, MA 02332 Notice Sent To: Anthony J Riley, Esq. Galvin and Galvin, P.C. 10 Enterprise St Suite 3, Duxbury, MA 02332	41	

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	<p>Notice Sent To: Leon Nowicki, Esq. Law Offices Of John B Flemming 1 Elm Square Suite 3C, Andover, MA 01810</p> <p>Notice Sent To: Matthew J Dunn, Esq. The Dunn Law Group, P.C. 132 North St, Hingham, MA 02043</p> <p>Notice Sent To: Meghan E Hall, Esq. The Dunn Law Group, P.C. 132 North St, Hingham, MA 02043</p>		
12/15/2020	<p>Event Result:: Rule 56 Hearing scheduled on: 12/22/2020 10:00 AM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date Hon. Anthony M. Campo, Presiding</p>		
12/23/2020	<p>Defendant Spectrum Building Co., Inc.'s Motion for summary judgment, memorandum of law in support; Plaintiff's OPPOSITION; reply memorandum in support, consolidated statement of material facts, joint record appendix, affidavit of compliance - Rule 9A</p>	42	
01/19/2021	<p>Event Result:: Rule 56 Hearing scheduled on: 01/19/2021 09:30 AM</p> <p>Has been: Rescheduled For the following reason: By Court prior to date Hon. Daniel J. O'Shea, Presiding</p>		
01/26/2021	<p>Matter taken under advisement: Rule 56 Hearing scheduled on: 01/26/2021 09:30 AM</p> <p>Has been: Held - Under advisement Hon. Daniel J. O'Shea, Presiding</p>		
02/01/2021	<p>MEMORANDUM & ORDER:</p> <p>For all of the foregoing reasons, the motion for summary judgment is hereby ALLOWED on Count III breach of contract of the first amended complaint against spectrum and is hereby DENIED on Count V breach of express warranty against spectrum.</p> <p>Judge: O'Shea, Hon. Daniel J.</p>	43	
02/02/2021	<p>Endorsement on Motion for summary judgment (#42.0): ALLOWED</p> <p>Motion for summary judgment Allowed on Count III and Denied on Count IV, see memorandum of decision and order dated 2/1/21.</p> <p>Judge: O'Shea, Hon. Daniel J.</p>		
02/17/2021	<p>Defendant Spectrum Building Co., Inc.'s Notice of motion for reconsideration</p>	44	Image
03/01/2021	<p>Defendant Spectrum Building Co., Inc.'s Motion for reconsideration, memorandum in opposition, reply memorandum in support, affidavit of compliance, list of documents, notice of filing</p>	45	
03/04/2021	<p>Endorsement on Motion for reconsideration (#45.0): DENIED</p> <p>For reasons set forth in the memorandum of decision and the plaintiff's memorandum in opposition to Defendant's motion for reconsideration, the motion for reconsideration is DENIED.</p> <p>Judge: O'Shea, Hon. Daniel J.</p>		
03/08/2021	<p>Attorney appearance</p> <p>On this date Meghan E Hall, Esq. dismissed/withdrawn for Defendant Spectrum Building Co., Inc.</p>	46	Image
03/11/2021	<p>The following form was generated:</p> <p>Notice to Appear for Final Pre-Trial Conference 4/29/21 at 2pm via telephone</p> <p>Sent On: 03/11/2021 11:06:14</p> <p>Notice Sent To: Robert W Galvin, Esq. Galvin and Galvin, PC 10 Enterprise St Suite 3, Duxbury, MA 02332</p> <p>Notice Sent To: Anthony J Riley, Esq. Galvin and Galvin, P.C. 10 Enterprise St Suite 3, Duxbury, MA 02332</p> <p>Notice Sent To: Leon Nowicki, Esq. Law Offices Of John B Flemming 1 Elm Square Suite 3C, Andover, MA 01810</p> <p>Notice Sent To: Matthew J Dunn, Esq. The Dunn Law Group, P.C. 132 North St, Hingham, MA 02043</p> <p>Notice Sent To: Meghan E Hall, Esq. The Dunn Law Group, P.C. 132 North St, Hingham, MA 02043</p>	47	
04/29/2021	<p>Event Result:: Final Pre-Trial Conference scheduled on: 04/29/2021 02:00 PM</p> <p>Has been: Held as Scheduled</p> <p>Comments: FTR</p>		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
	Hon. Daniel J. O'Shea, Presiding		
04/29/2021	Scheduled: Event: Jury Trial Date: 11/15/2021 Time: 09:00 AM Result: Rescheduled		
07/16/2021	Event Result:: Mediation Session (ADR) scheduled on: 07/19/2021 09:30 AM Has been: Canceled For the following reason: Joint request of parties Hon. Valerie A Yarashus, Presiding		
11/03/2021	Scheduled: Event: Jury Trial Date: 11/29/2021 Time: 09:00 AM Result: Held as Scheduled		
11/03/2021	Event Result:: Jury Trial scheduled on: 11/15/2021 09:00 AM Has been: Rescheduled For the following reason: By Court prior to date Comments: Counsel being held for Trial to begin on 11/29/21 at 9:00a.m. (email sent). Hon. William M White, Jr., Presiding		
11/09/2021	Party status: Defendant Spectrum Building Co., Inc.: Dismissed by agreement of parties;		
11/09/2021	Event Result:: Final Trial Conference scheduled on: 11/09/2021 02:00 PM Has been: Held as Scheduled Comments: FTR Reported on the Record Case Settled with Defendant, Spectrum Building, Co and will be filing a stipulation of dismissal with the Court. Hon. William M White, Jr., Presiding		
11/09/2021	Defendant Indian Pond Country Club, Inc.'s Motion for attorney conducted panel voir dire or in the alternative attorney conducted individual voir dire	48	Image
11/09/2021	Defendant Indian Pond Country Club, Inc.'s Motion in limine for ruling to preclude the expert testimony of Michael S. Johnstone concerning serious personal injury or death from golf balls hit from the 15th tee of Indian Pond Country Club	48.1	Image
11/09/2021	Defendant Indian Pond Country Club, Inc.'s Motion in limine for ruling as to inadmissibility of testimony concerning diminution of value or rental value	48.2	Image
11/09/2021	Witness list	48.3	Image
	Applies To: Indian Pond Country Club, Inc. (Defendant)		
11/09/2021	Request for Jury instructions filed by Defendant Indian Pond Country Club, Inc.	48.4	Image
	Applies To: Indian Pond Country Club, Inc. (Defendant)		
11/09/2021	Proposed Filings/Orders	48.5	Image
	trial exhibits		
	Applies To: Indian Pond Country Club, Inc. (Defendant)		
11/22/2021	Proposed Filings/Orders	49	Image
	Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)		
11/29/2021	Proposed Filings/Orders	50	Image
	jury instructions		
	Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)		
11/29/2021	Proposed Filings/Orders	51	Image
	venire questions from Plaintiff		
	Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
11/29/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion in limine to obtain evidentiary ruling on the defense offered by Defendant, Indian Pond Country Club, Inc. in light of claims made at trial	52	Image
11/29/2021	Witness list Applies To: Galvin, Esq., Robert W (Attorney) on behalf of Tenczar, Erik (Plaintiff)	52.1	Image
11/29/2021	Event Result:: Jury Trial scheduled on: 11/29/2021 09:00 AM Has been: Held as Scheduled Case called for Jury Trial before White, J. Venire Sworn. Panel/Atty Conducted Voir Dire Impanelment begins. Counsel agree to three Peremptory Challenges each side. 7 Jurors Seated; Counsel content with the Jury. Jury Sworn. Preliminary Jury Instruction given. Hearing outside the presence of the Jury, plaintiff makes Oral Motion to Dismiss Nuisance Claim (Count 1) with assent of the Defendant, ALLOWED. Opening Statements given by both sides. Evidence begins. Matter continued to tomorrow morning, 11/30/21 at 9:00a.m. FTR Hon. William M White, Jr., Presiding		
11/30/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion in limine to obtain evidentiary ruling on the defense offered by defendant Indian Pond Country Club Inc in light of claims made at trial	52.2	Image
11/30/2021	Proposed Filings/Orders supplemental jury instructions Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)	53	Image
11/30/2021	Event Result:: Jury Trial scheduled on: 11/30/2021 09:00 AM Has been: Held as Scheduled Jury Trial resumes before White, J. and all 7 jurors. Evidence continues. Matter continued to tomorrow at 12/1/21 at 9:00a.m. FTR Hon. William M White, Jr., Presiding		
12/01/2021	Event Result:: Jury Trial scheduled on: 12/01/2021 09:00 AM Has been: Held as Scheduled Jury Trial resumes before White, J. and all 7 jurors. Evidence continues. Plaintiff rests; Defendant files motion for Directed Verdict - no action taken. Evidence continues. Matter continued to tomorrow morning at 9:00a.m. FTR Hon. William M White, Jr., Presiding		
12/01/2021	Proposed Filings/Orders supplemental jury instructions Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)	58	
12/02/2021	Event Result:: Jury Trial scheduled on: 12/02/2021 09:00 AM Has been: Held as Scheduled Jury trial resumes before White, J. and all 7 Jurors. Evidence continues. Matter continued to Monday, 12/6/21 at 9:00a.m. FTR Hon. William M White, Jr., Presiding		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/02/2021	Defendant Indian Pond Country Club, Inc.'s Supplemental for request for instructions to the jury	59	
12/02/2021	Proposed Filings/Orders proposed verdict slip Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)	60	
12/02/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion in limine to obtain evidentiary ruling on the defense offered by Defendant, Indian Pond Country Club, Inc. in light of claims made at trial	61	
12/02/2021	Endorsement on Motion in limine of obtain evidentiary ruling on the defense offered in light of claims made at trial (#61.0): ALLOWED to the extent of the covenant and restrictions and amended covenants and restrictions of indicted in open court. The court finds defendant IPCC reserved the right for golfer to retrieve event golf balls hit upon the unimproved portions of the residential lots sold, but not the improved portions of the some lots. Judge: White, Jr., Hon. William M		
12/06/2021	Defendant Indian Pond Country Club, Inc.'s Request for supplemental request for instruction to the jury Second request	54	Image
12/06/2021	General correspondence regarding Plaintiff's proposed jury instructions	55	Image
12/06/2021	Verdict of jury for party	56	Image
12/06/2021	JUDGMENT entered on this date.: Judgment on Jury Verdict After Jury Verdict Presiding: Hon. William M White, Jr. Judgment For: Erik Tenczar Athina Tenczar Judgment Against: Indian Pond Country Club, Inc. Terms of Judgment: Interest Begins: 07/13/2018 Jdgmnt Date: 12/06/2021 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 3500000.00 Filing Fees: 280.00 Judgment Total: 4,930,443.00 Copies sent Dec 7,2021	57	Image
12/06/2021	Event Result: Jury Trial scheduled on: 12/06/2021 09:00 AM Has been: Held as Scheduled Jury trial resumes before White, J. and all 7 jurors. Evidence continues. Defense rests. Defendants Motion for Directed Verdict filed and heard at the close of all the evidence - Denied. Closing arguments given by both sides. Jury Charge given. Foreperson chosen: Juror #74, Seat 8 Court Officer sworn and Jury sent out to deliberate. Verdict Returned, Affirmed and Recorded. FTR Hon. William M White, Jr., Presiding		
12/06/2021	Defendant Indian Pond Country Club, Inc.'s Motion for directed verdict at the close of defendant's evidence, memorandum in support	62	
12/06/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion for directed verdict	63	
12/06/2021	Endorsement on Motion for directed verdict (#63.0): DENIED Judge: White, Jr., Hon. William M		
12/06/2021	Proposed Filings/Orders remedial order after trial	64	Image

<u>Docket</u> <u>Date</u>	<u>Docket Text</u>	<u>File</u> <u>Ref</u> <u>Nbr.</u>	<u>Image</u> <u>Avail.</u>
	Judge: White, Jr., Hon. William M		
	see permanent injunction issued December 13, 2021		
12/13/2021	Event Result:: Motion Hearing scheduled on: 12/13/2021 02:00 PM Has been: Held as Scheduled Comments: FTR Hon. William M White, Jr., Presiding		
12/13/2021	ORDER: permanent injunction Defendant Indian Pond Country Club, 60 Country Club Way, Kingston, Plymouth County, Massachusetts, is hereby enjoined and prohibited from operating its golf course in any manner that permits, causes or results in golf balls being propelled onto plaintiff's improved property at 294 Country Club Way, Kingston, Plymouth county, Massachusetts defendant is further enjoined and prohibited from allowing or permitting any golf balls to cause damages to any plaintiffs' real or personal property.	65	Image
12/15/2021	Defendant-Intervenor Indian Pond Country Club, Inc.'s Notice of motion	66	Image
12/30/2021	Defendant Indian Pond Country Club, Inc.'s Motion for judgment notwithstanding the verdict, memorandum of law in support, plaintiff's opposition, defendant's reply memorandum of law	67	Image
12/30/2021	Defendant Indian Pond Country Club, Inc.'s Motion for a new trial, or in the alternative, for a remittitur of the damages award, memorandum of law in support, plaintiff's opposition, notice of filing/certificate of service, list of documents submitted	68	Image
01/03/2022	Defendant Indian Pond Country Club, Inc.'s Motion for an order directing the office of transcription services to transcribe the audio/visual deposition testimony of Michael Johnstone and Damian Pascuzzo as part of the trial transcript, affidavit of compliance with superior court rule 9a concerning no opposition to motion, list of documents submitted, notice of filing/certificate of service	69	
01/14/2022	The following form was generated: Notice to Appear for Post-Judgment Motion son 2/28/22 at 10:00.m. Sent On: 01/14/2022 11:38:04	70	
01/20/2022	Plaintiffs Erik Tenczar, Athina Tenczar's Motion for Post Judgment Real Estate Attachment; Defendant Indian Pond Country Club Inc.'s Memorandum of Law in Opposition; Plaintiff's Reply to Defendant Indian Pond Country Club, Inc.'s Opposition; Affidavit of Robert W. Galvin, ESQ.in Compliance with S.C. Rule 9A; Exhibits Attached	71	Image
02/03/2022	Endorsement on Motion for an order directing the office of transcription services to transcribe the audio/visual deposition testimony of Michael Johnstone and Damian Pascuzzo as part of the trial transcript. (#69.0): ALLOWED Judge: White, Jr., Hon. William M		
02/03/2022	The following form was generated: Notice to Appear Sent On: 02/03/2022 12:29:15		
02/28/2022	Matter taken under advisement: Motion Hearing scheduled on: 02/28/2022 10:00 AM Has been: Held - Under advisement Comments: FTR Hon. William M White, Jr., Presiding		
02/28/2022	Matter taken under advisement: Hearing for Real Estate Attachment scheduled on: 02/28/2022 10:00 AM Has been: Held - Under advisement Comments: FTR Hon. William M White, Jr., Presiding		
03/03/2022	Endorsement on Motion for judgment notwithstanding the verdict (#67.0): DENIED After hearing and review the motion is DENIED. From a plain reading of the covenants and restrictions, the easement reserved by IPCC extended only to the unimproved portions of plaintiff's property. CC:RG, AR, LN, JD, MD		

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
03/03/2022	Endorsement on Motion for a new trial, or in the alternative, for a remittitur of the damages award (#68.0): DENIED The motion for a new trial is DENIED. The motion for remittitur is DENIED CC:RG, AR, LN, JD, MD		
03/03/2022	Endorsement on Motion for a Real Estate Attachment (#71.0): ALLOWED \$4,930,443.00 CC:RG, AR, LN, JD, MD		
03/15/2022	Notice of appeal filed. Applies To: Indian Pond Country Club, Inc. (Defendant)	72	Image
03/15/2022	General correspondence regarding Defendant Indian Pond Country Club, Inc's Statement Concerning the Trial Transcript Pursuant to Mass. R. Cv. A.P. 8(b)(1) and Trial Court Administrative Order 19-1	73	Image
03/16/2022	Docket Note: appeal notices sent to all parties cc: RWG, AJR, LN, MJD	74	
03/31/2022	List of exhibits	75	
04/19/2022	Case sent to Plymouth Superior - PLYMOUTH Location.		
04/21/2022	Transcript received for 11/29/21, 11/30/21, 12/1/21, 12/2/21, 12/6/21		
04/21/2022	Appeal: Statement of the Case on Appeal (Cover Sheet).	76	
04/21/2022	Notice to Clerk of the Appeals Court of Assembly of Record	77	
04/21/2022	Notice of assembly of record sent to Counsel	78	
05/02/2022	Notice of Entry of appeal received from the Appeals Court RE: No. 2022-P-0394 In accordance with Massachusetts Rule of Appellate Procedure 10(a)(3), please note that the above-referenced case was entered in this Court on April 28, 2022.	79	Image

Case Disposition

<u>Disposition</u>	<u>Date</u>	<u>Case Judge</u>
Judgment after Jury Verdict	12/06/2021	

COMMONWEALTH OF MASSACHUSETTS**PLYMOUTH, SS****SUPERIOR COURT NO.: 1883CV00757****ERIK TENCZAR, et. als.,****Plaintiff****v.****INDIAN POND COUNTRY CLUB, INC., et. als.,****Defendants****ORDER AND DECISION ON PLAINTIFFS' MOTION
FOR PRELIMINARY INJUNCTION****Buckley, E.M., Justice**

The matter came before the court for hearing on plaintiff's Emergency Motion for Preliminary Injunction. This is an action brought by the plaintiffs, Erik and Athina Tenczar (plaintiffs) against the defendant alleging continual trespass and/or nuisance. The plaintiffs are owners of property abutting the Indian Pond Golf Course. In their action they claim damages arising out of errant golf ball strikes which land on their property and, at times strike their home which they aver prevent their use and enjoyment of their property. By their motion the plaintiffs seek this court enter an Order requiring the defendants remediate the trespass/ nuisance¹ by enjoining the defendants' continued use of the 15th hole until such time as the defendant develops a new interim or permanent solution that prevents errant golf balls from striking the plaintiffs' home and creating damage and a risk of harm to the plaintiffs and their children.

In 2018 the plaintiff filed a Motion for Preliminary Injunction which was heard on August 22, 2018. The court did not rule on the motion at that time as the parties entered into an Interim

¹ Plaintiffs request installation of netting or other landscape measures and change in the configuration of the golf course hole to prevent golf balls from being hit upon their property.

Agreement which set forth six agreed upon measures² to address the issues raised in the plaintiffs Complaint. The Agreement was in place during the 2019 golf course season and despite the mitigation measures, the plaintiffs allege that the measures were ineffective in preventing errant golf ball strikes to their land/ home and the danger those present.

The defendants oppose the plaintiffs motion for preliminary injunction on the grounds that the plaintiffs cannot establish that there is a likelihood of success on the merits of the plaintiffs action and further, even were the plaintiffs to establish a likelihood of success, that the balance of harms weighs in favor of the defendants who would incur substantial interruption of the use of the golf course for its members and their guests and would essentially convert the 18 hole golf course into a 17 hole golf course and cause the defendants to incur substantial costs and financial losses.

STATEMENT OF FACTS

It is undisputed by the parties that the Indian Pond Country Club and the Indian Pond Estates was created in 1997 by special permit from the Town of Kingston. As planned, the golf course was the centerpiece of the development, surrounded by estate homes. The golf course was constructed in 1999-2000 and permitting for the 134 subdivision homes was approved by the Town of Kingston in 1998. In 2001 a Declaration of Protective Covenants and Restrictions (“Declaration”) which applies to all homes constructed in the subdivision was recorded in the Plymouth County Registry of Deeds. Thereafter, an Amendment to the Declaration of Protective Covenants and Restrictions (“Amendment”) was recorded; this Amendment was made applicable to the lots adjacent to the golf course.

In April 2017 the plaintiffs purchased their newly constructed home at 294 Country Club Way, Kingston, MA which is part of the Indian Pond Golf Course community. The home abuts the 15th hole of the golf course and is subject to the provisions of the Declaration and Amendment. At the time the plaintiffs executed a Purchase and Sale Agreement for the home they understood and agreed that they were purchasing a home on a golf course and that that natural occurrences that result from living adjacent to the golf course would include but not be limited to “errant golf balls” among other things. See, Rider “A”, section 61. That provision specifically provided that the plaintiffs (“Buyer”) “ [a]gree to indemnify and hold harmless Seller, from any such

² Proposed by the defendants’ golf course architect.

occurrences that are the natural result of residing adjacent to a golf course, including but not limited to, errant golf balls and noise generated by landscaping equipment.”³ Additionally, the Amendment provided more expansive limitations upon the owner’s use of the land. Specifically, no swimming pools, play sets, clotheslines or outbuildings were allowed and non-emergency work upon the lot was not allowed on weekends or other times which would interfere with the operation of the golf course. The Amendment further provides a “perpetual right and easement for the use of providing reasonable foot access to golfers to retrieve errant golf balls on unimproved areas of the residential lots”. An additional easement was granted for the benefit of the golf course for “reasonable and efficient operation of the golf course ... in a customary and usual manner”. See, Amendment par. 1, 3. The plaintiffs in executing the purchase and sales documents were well aware that errant golf shots are a natural occurrence in the game of golf. Golf is a game of misses⁴ and that understanding is conveyed clearly in the legal documents creating the subdivision and golf course.

The plaintiffs argue that the grant of the easement only relates to the “unimproved” portions of their land and does not apply to the improved areas of land which include their home and landscaped yard and frontage of their property where at times errant golf balls fall. The court disagrees. The controlling documents creating the golf course and estate homes demonstrate that the developer, in creating a golf course/ residential development intended for a golf course to operate as the centerpiece of the subdivision and, to that end, expressly reserved the right to create and operate a golf course on the land within the subdivision. A clear relationship exists, as evidenced in the legal documents, creating the golf course and estate homes which are part of one common scheme.

ANALYSIS

It is well settled that “[a] preliminary injunction is an extraordinary remedy never awarded as of right.” Winter v. Natural Res. Def. Council, Inc., 555 U.S. 7, 24 (2008). To the contrary, “the significant remedy of a preliminary injunction should not be granted unless the plaintiffs had made a clear showing of entitlement thereto.” Student No. 9 v. Board of Educ., 440 Mass. 752, 762 (2004). To obtain preliminary relief, the individual plaintiffs must prove a likelihood of success

³ That provision specifically survived the delivery of the Deed.

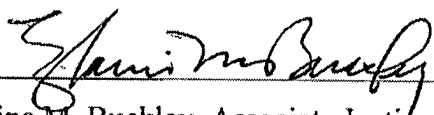
⁴ Quote from Ben Hogan- “This is a game of misses. The guy who misses the best is going to win.”

on the merits of the case and a balance of harm in their favor when considered in light of their likelihood of success. Packaging Indus. Group, Inc. v. Cheney, 380 Mass. 609, 616-617 (1980). "One ... is not entitled to seek [injunctive] relief unless the apprehended danger is so near as at least to be reasonably imminent." Shaw v. Harding, 306 Mass. 441, 449-50 (1940). A party seeking to enjoin governmental action must also ordinarily show that "the relief sought will [not] adversely affect the public." Tri-Nel Mgt. v. Bd. of Health of Barnstable, 433 Mass. 217, 219 (2001), citing Commonwealth v. Mass CRINC, 392 Mass. 79, 89 (1984). In determining the motion for preliminary injunction, the Court must balance the "risk of harm in light of his chance of success on the merits." See, Siemens Building Tech., Inc., v. Division of Capital Mgmt., 439 Mass. 759, 762 (2003).

Here, the court finds that the plaintiffs cannot establish a likelihood of success on the merits of their action or that they will suffer irreparable harm. See, Packaging Industries Group, Inc. v. Cheney, 380 Mass. 609 (1980). The remedy sought by the plaintiffs in their injunction is one best left to determination by a trier of fact. Based upon the state of the record at this time the relief sought by the plaintiffs in their motion cannot be granted. The plaintiffs aver that they have incurred damage to their home which include damage to siding, broken windows from errant balls strikes and that they are in fear of personal injury to themselves, their children and/or visitors to their property from errant strikes.⁵ These damages are recoverable at trial and do not rise to the level of irreparable harm. Equally, the balance of harms favors the defendant in this case which would incur significant costs for the remediation proposed by the plaintiff and would also incur financial losses from reducing the size of the golf course and potential suits by its members.

ORDER

For the aforementioned reasons, the plaintiffs Motion for Preliminary Injunction is DENIED.

 J.
Elaine M. Buckley, Associate Justice Superior Court

Dated:

May 26, 2020

⁵ To date, no claims of personal injury have occurred.

6-15-20

39

Zimbra

2020-J-0248 - Notice of Docket Entry

From : AppealsCtClerk@appct.state.ma.us

Mon, Jun 15, 2020 01:00 PM

Subject : 2020-J-0248 - Notice of Docket Entry**To :** plymouthclerkofcourts@jud.state.ma.us**Reply To :** AppealsCtClerk@appct.state.ma.us

-COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT CLERK'S OFFICE

June 15, 2020

RE: No. 2020-J-0248

Lower Ct. No.: 1883CV00757

ERIK TENCZAR & another

vs.

INDIAN POND COUNTRY CLUB, INC. & others

NOTICE OF DOCKET ENTRY

Please take note that on June 15, 2020, the following entry was made on the docket of the above-referenced case:

ORDER: A trial judge's decision on a preliminary injunction requires "an evaluation in combination of the moving party's claim of injury and its chance of success on the merits." *Edwin R. Sage Co. v. Foley*, 12 Mass. App. Ct. 20, 25 (1981). When reviewing such a decision, the single justice "focuses on whether the trial court abused its discretion" -- "that is, whether the court applied proper legal standards and whether the record discloses reasonable support for its evaluation of factual questions." *Ibid.* See *Fordyce v. Town of Hanover*, 457 Mass. 248, 256 (2010). Thus, the single justice must "exercise special care not to substitute [his or her] judgment for that of the trial court where the records disclose reasoned support for its action." *Edwin R. Sage*, 12 Mass. App. Ct. at 26. Here, the petitioners have failed to show that the judge committed an error of law or otherwise abused her discretion in denying the request for preliminary injunction. (Hand, J.) *Notice/attest/Buckley, J.

REGISTRATION FOR ELECTRONIC FILING. Every attorney with an appeal pending in the Appeals Court must have an account with eFileMA.com. Registration with eFileMA.com constitutes consent to receive electronic notification from the Appeals Court and e-service of documents. Self-represented litigants are encouraged, but not required, to register for electronic filing.

ELECTRONIC FILING. Attorneys must e-file all non-impounded documents. Impounded documents and submissions by self-represented litigants may be e-filed. No paper original or copy of any e-filed document is required. Additional information is located on our Electronic Filing page: <http://www.mass.gov/courts/court-info/appealscourt/efiling-appeals-faq-gen.html>

FILING OF CONFIDENTIAL OR IMPOUNDED INFORMATION. Any document containing confidential or impounded material must be filed in compliance with Mass. R. App. P. 16(d), 16(m), 18(a)(1)(A)(iv), 18(d), and 21.

Very truly yours,

The Clerk's Office

Dated: June 15, 2020

To:

RobertW.Galvin, EsquireAnthonyRiley, EsquireLeonNowicki, EsquireJohnB.Flemming, Esquire
MatthewJ.Dunn, EsquireMeghanHall, EsquirePlymouthSuperiorCourt

If you have any questions, or wish to communicate with the Clerk's
Office about this case, please contact the Clerk's Office at
617-725-8106. Thank you.

Volume: 2
 Pages: 1-272
 Exhibits: See Index

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, SS.

SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT

ERIK TENCZAR, ET AL.

*

*

vs.

*

Docket No. 1883CV00757

*

INDIAN POND COUNTRY CLUB, INC

*

ET AL.

*

RE: JURY TRIAL

TRIAL DAY 2

BEFORE THE HONORABLE WILLIAM M. WHITE, JR.

APPEARANCES:

For the Plaintiff, Erik & Athina Tenczar:

Galvin and Galvin, PC

By: Robert W. Galvin, Esquire

By: Anthony J. Riley, Esquire

10 Enterprise Street - Suite 3

Duxbury, Massachusetts 02332

781.934.5678

For the Defendant Indian Pond Country Club, Inc.:

Law Offices of John B. Flemming

By: John B. Flemming, Esquire

By: Leon Nowicki, Esquire

1 Elm Square - Suite 3C

Andover, Massachusetts 01810

978.474.6444

Brockton, Massachusetts

Courtroom 2

November 30, 2021

Court Transcriber: Lisa Marie Phipps, Certified Shorthand
 Reporter, Registered Professional Reporter, Certified
 Realtime Reporter

LMP***Serving: Massachusetts Rhode Island******Connecticut New Hampshire******LMPREPORTING@GMAIL.COM******(508) 641-5801******A.047***

1 aware of that.

2 But I -- you know, I generally am here
3 early in the morning; and, you know, if you're
4 here, I'll come out and I'll tell you what I've
5 decided, okay?

6 MR. GALVIN: Yeah.

7 THE COURT: Okay.

8 MR. GALVIN: Your Honor, the other issue,
9 though, I think we have to address in some way
10 before we start today because I think it has a
11 bearing on the rest of the evidence in the case.

12 THE COURT: Okay.

13 So this is the motion in motion to obtain
14 evidentiary ruling on the defense offered by the
15 defendant, Indian Pond Country Club, Inc., in
16 light of claims made at trial.

17 MR. GALVIN: Right.

18 THE COURT: So why don't you tell me
19 about that.

20 MR. GALVIN: Sure.

21 So during the opening argument yesterday,
22 Indian Pond Country Club, and counsel, basically
23 told the jury that the recorded covenants and
24 restrictions grant them the right to -- or
25 obligated my clients to be subject to these golf

1 MR. FLEMMING: Your Honor, we received
2 this -- this motion at ten o'clock last night.

3 And, you know, we don't have an -- we
4 haven't had an opportunity to prepare anything to
5 rebut this.

6 There's statements being made by Attorney
7 Galvin, that, for example, the original
8 declaration of covenants and easements doesn't
9 reserve the right to -- to create and operate a
10 golf course, which it does at paragraph 20 of the
11 original agreement.

12 This case is no different than the
13 *Commercial Wharf East* case where the -- where the
14 defendant in that case reserved the right to
15 operate a parking lot in the backyard of the
16 condominium building and...

17 THE COURT: So let me tell you what
18 I'm -- what I've decided.

19 The motion in limine is denied.

20 And we can have the jury now.

21 I mean, when we get to -- when we reach a
22 point where there's sufficient information
23 that -- because you are going to have to
24 prove evidence of trespass -- I agree with
25 Attorney Flemming that you are going to have to

<u>Docket Date</u>	<u>Docket Text</u>	<u>File Ref Nbr.</u>	<u>Image Avail.</u>
12/02/2021	Defendant Indian Pond Country Club, Inc.'s Supplemental for request for instructions to the jury	59	
12/02/2021	Proposed Filings/Orders proposed verdict slip Applies To: Tenczar, Erik (Plaintiff); Tenczar, Athina (Plaintiff)	60	
12/02/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion in limine to obtain evidentiary ruling on the defense offered by Defendant, Indian Pond Country Club, Inc. in light of claims made at trial	61	
12/02/2021	Endorsement on Motion in limine of obtain evidentiary ruling on the defense offered in light of claims made at trial (#61.0): ALLOWED to the extent of the covenant and restrictions and amended covenants and restrictions of indicted in open court. The court finds defendant IPCC reserved the right for golfer to retrieve event golf balls hit upon the unimproved portions of the residential lots sold, but not the improved portions of the some lots. Judge: White, Jr., Hon. William M		
12/06/2021	Defendant Indian Pond Country Club, Inc.'s Request for supplemental request for instruction to the jury Second request	54	Image
12/06/2021	General correspondence regarding Plaintiff's proposed jury instructions	55	Image
12/06/2021	Verdict of jury for party	56	Image
12/06/2021	JUDGMENT entered on this date.: Judgment on Jury Verdict After Jury Verdict Presiding: Hon. William M White, Jr. Judgment For: Erik Tenczar Athina Tenczar Judgment Against: Indian Pond Country Club, Inc. Terms of Judgment: Interest Begins: 07/13/2018 Jdgmnt Date: 12/06/2021 Interest Rate: .12 Daily Interest Rate: .000329 Damages: Damage Amt: 3500000.00 Filing Fees: 280.00 Judgment Total: 4,930,443.00 Copies sent Dec 7,2021	57	Image
12/06/2021	Event Result:: Jury Trial scheduled on: 12/06/2021 09:00 AM Has been: Held as Scheduled Jury trial resumes before White, J. and all 7 jurors. Evidence continues. Defense rests. Defendants Motion for Directed Verdict filed and heard at the close of all the evidence - Denied. Closing arguments given by both sides. Jury Charge given. Foreperson chosen: Juror #74, Seat 8 Court Officer sworn and Jury sent out to deliberate. Verdict Returned, Affirmed and Recorded. FTR Hon. William M White, Jr., Presiding		
12/06/2021	Defendant Indian Pond Country Club, Inc.'s Motion for directed verdict at the close of defendant's evidence, memorandum in support	62	
12/06/2021	Plaintiff Erik Tenczar, Athina Tenczar's Motion for directed verdict	63	
12/06/2021	Endorsement on Motion for directed verdict (#63.0): DENIED Judge: White, Jr., Hon. William M		
12/06/2021	Proposed Filings/Orders remedial order after trial	64	Image

original mm

56

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

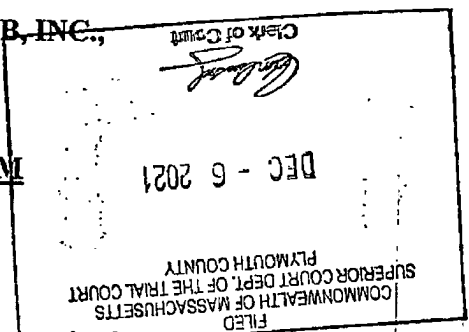
SUPERIOR COURT
CIVIL ACTION
No. 1883CV00757

ERIK TENCZAR and ATHINA TENCZAR
Plaintiffs,

vs.

INDIAN POND COUNTRY CLUB, INC.,
Defendant.

SPECIAL VERDICT FORM



1. Do the plaintiffs exclusively own or control the land in question?

Yes _____

No _____

If your answer to Question #1 is "Yes," please go on to Question #2.

If your answer to Question #1 is "No," please have the foreperson date and sign this form. You have reached your verdict.

2. Did the defendant set in motion a force which, in the usual course of events, caused damages to the property of the plaintiffs?

Yes _____

No _____

If your answer to Question #2 is "Yes," please go on to Question #3.

If your answer to Question #2 is "No," please have the foreperson date and sign this form. You have reached your verdict.

3. Was the entry onto the land of the plaintiffs without their permission?

Yes _____

No _____

If your answer to Question #3 is "Yes," please go on to Question #4.

If your answer to Question #3 is "No," please have the foreperson date and sign this form. You have reached your verdict.

4. As a result of the entry onto their land, have the plaintiffs suffered any injury or harm?

Yes _____

No _____

If your answer to Question #4 is "Yes," please go on to Questions #5.

If your answer to Question #4 is "No," please have the foreperson date and sign this form. You have reached your verdict.

5. Was there an intervening and superseding cause of plaintiffs' injuries that the defendant could not have reasonably foreseen?

Yes _____

No _____

If your answer to Question #5 is "Yes," please have the foreperson date and sign this form. You have reached your verdict.

If your answer to Question #5 is "No," please go on to Questions #6 and #7.

6. What amount of money will fully and fairly compensate the plaintiffs for their damages?

\$ 3,500,000.00

Amount in Figures

three million five hundred thousand Dollars

Amount in Words

7. Please break down the total of damages set forth in response to Question 6 above, into each of the following elements:

A. Please set forth the amount of the total damages set forth in your response to Question 6 intended to compensate the plaintiffs for their reasonable expenses which have been incurred or will be incurred to investigate and/or repair the damages

\$ 100,000.00
Amount in Figures

one hundred thousand Dollars
Amount in Words

B. Please set forth the amount of the total damages set forth in your response to Question 6 intended to compensate the plaintiffs for mental and emotional suffering and any other items of general damages which have been incurred or will be incurred in the future.

\$ 3,400,000.00
Amount in Figures (Past and Present)

three million four hundred thousand Dollars
Amount in Words (Past and Present)

\$ 0
Amount in Figures (Future)

\$ zero
Amount in Words (Future)

I HEREBY CERTIFY THAT THE ABOVE FINDINGS REPRESENT THE VERDICT OF AT LEAST SIX - SEVENTHS (6/7) OF THE MEMBERS OF THE JURY.

Christine A. Kinney
Foreperson of the Jury

DATED:

Dec 6, 2021

JUDGMENT ON JURY VERDICT

Trial Court of Massachusetts
The Superior Court

DOCKET NUMBER

1883CV00757

Robert S. Creedon, Jr., Clerk of Courts

CASE NAME

Tenczar, Erik et al
vs.
Indian Pond Country Club, Inc. et al

COURT NAME & ADDRESS

Plymouth County Superior Court - Brockton
72 Belmont Street
Brockton, MA 02301

JUDGMENT FOR THE FOLLOWING PLAINTIFF(S)

Erik Tenczar
Athena Tenczar

JUDGMENT AGAINST THE FOLLOWING DEFENDANT(S)

Indian Pond Country Club, Inc.

This action came on for trial before the Court, Hon. William M White, Jr., presiding, the issues having been duly tried and the jury having rendered its verdict,

After Jury Verdict, it is **ORDERED AND ADJUDGED:**

That the plaintiff(s) named above recover of the defendant(s) named above, Jointly & Severally the "Judgment Total" with interest thereon as outlined below as provided by law, and the statutory costs of action.

1. Date of Breach, Demand or Complaint	07/13/2018
2. Date Judgment Entered	12/06/2021
3. Number of Days of Prejudgment Interest (line 2 - Line 1)	1242
4. Annual Interest Rate of 0.12/365.25 = Daily Interest rate	.000329
5. Single Damages	\$3,500,000.00
6. Prejudgment Interest (lines 3x4x5)	\$1,430,163.00
7. Double or Treble Damages Awarded by Court (where authorized by law)	\$
8. Statutory Costs	\$280.00
9. Attorney Fees Awarded by Court (where authorized by law)	\$
10. JUDGMENT TOTAL PAYABLE TO PLAINTIFF(S) (Lines 5+6+7+8+9)	\$4,930,443.00

DATE JUDGMENT ENTERED
12/06/2021

CLERK OF COURT/ASST. CLERK

X

Date/Time Printed: 12-06-2021 16:08:12

SCV084: 04/2017

COMMONWEALTH OF MASSACHUSETTS

PLYMOUTH, ss.

**SUPERIOR COURT
CIVIL ACTION
Nos. 1883CV00757**

**ERIK TENCZAR and ATHINA TENCZAR
Plaintiffs,**


vs.

**INDIAN POND COUNTRY CLUB, INC.,
Defendant.**

PERMANENT INJUNCTION


Effective immediately:

Defendant Indian Pond Country Club, 60 Country Club Way, Kingston, Plymouth County, Massachusetts, is hereby enjoined and prohibited from operating its golf course in any manner that permits, causes or results in golf balls being propelled onto Plaintiffs' improved property at 294 Country Club Way, Kingston, Plymouth County, Massachusetts. Defendant is further enjoined and prohibited from allowing or permitting any golf balls to cause damages to any of Plaintiffs' real or personal property.




William M. White, Jr.
Associate Justice
Brockton Superior Court

December 13, 2021

CLERK'S NOTICE	DOCKET NUMBER 1883CV00757	Trial Court of Massachusetts The Superior Court 
CASE NAME: Erik Tenczar et al vs. Indian Pond Country Club, Inc. et al		Robert S. Creedon, Jr., Clerk of Courts
TO Leon Nowicki, Esq. Law Offices Of John B Flemming 1 Elm Square Suite 3C Andover, MA 01810		COURT NAME & ADDRESS Plymouth County Superior Court - Brockton 72 Belmont Street Brockton, MA 02301
<p>You are hereby notified that on 03/03/2022 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for judgment notwithstanding the verdict (#67.0): DENIED</p> <p>After hearing and review the motion is DENIED. From a plain reading of the covenants and restrictions, the easement reserved by IPCC extended only to the unimproved portions of plaintiff's property.</p> <p>Judge: White, Jr., Hon. William M</p>		
DATE ISSUED 03/15/2022	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. William M White, Jr.	SESSION PHONE#


Date/Time Printed 03-15-2022 09:58:10

SCV018_X1:04/2017

CLERK'S NOTICE	DOCKET NUMBER 1883CV00757	Trial Court of Massachusetts The Superior Court 
CASE NAME: Erik Tenczar et al vs. Indian Pond Country Club, Inc. et al		Robert S. Creedon, Jr., Clerk of Courts
TO: Leon Nowicki, Esq. Law Offices Of John B Flemming 1 Elm Square Suite 3C Andover, MA 01810		COURT NAME & ADDRESS Plymouth County Superior Court - Brockton 72 Belmont Street Brockton, MA 02301
<p>You are hereby notified that on 03/03/2022 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for a new trial, or in the alternative, for a remittitur of the damages award (#68.0): DENIED The motion for a new trial is DENIED. The motion for remittitur is DENEID</p> <p>Judge: White, Jr., Hon. William M</p>		
DATE ISSUED 03/15/2022	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. William M White, Jr.	SESSION PHONE#

Date/Time Printed 03-15-2022 10:00:40

SCV018_X1: 04/2017

CLERK'S NOTICE	DOCKET NUMBER 1883CV00757	Trial Court of Massachusetts The Superior Court 
CASE NAME: Erik Tenczar et al vs. Indian Pond Country Club, Inc. et al		Robert S. Creedon, Jr., Clerk of Courts
TO: Leon Nowicki, Esq. Law Offices Of John B Flemming 1 Elm Square Suite 3C Andover, MA 01810		COURT NAME & ADDRESS Plymouth County Superior Court - Brockton 72 Belmont Street Brockton, MA 02301
<p>You are hereby notified that on 03/03/2022 the following entry was made on the above referenced docket:</p> <p>Endorsement on Motion for a Real Estate Attachment (#71.0): ALLOWED \$4,930,443.00</p>		
DATE ISSUED 03/15/2022	ASSOCIATE JUSTICE/ ASSISTANT CLERK Hon. William M White, Jr.	SESSION PHONE#

Date/Time Printed: 03-15-2022 10:06:25

SCVD16_X1:04/2017

14
back
front

BK 170196027

1335



Indian Pond Estates

KINGSTON, MASSACHUSETTS 02364

(617) 283-9117

Received & Recorded
PLYMOUTH COUNTY
REGISTRY OF DEEDS
05 JAN 1999 03:01PM
RICHARD C. SEIBERT
REGISTER
Bk 17019 Pg 27

DECLARATION OF PROTECTIVE COVENANTS AND RESTRICTIONS

Plan IV

WHEREAS, FREDERICK M. TONSHERG, and HIGH PINES CORPORATION (hereinafter collectively referred to as the "DEVELOPER"), with a place of business at 52 Main Street, Kingston, Massachusetts are the owners of certain parcels of land situated in Kingston, Plymouth County, Massachusetts, situated on the easterly side of Indian Pond Road, Kingston, Massachusetts; and

WHEREAS, said Developer, intending to develop said parcels of land in part for residential use, has caused portions of same to be subdivided as shown on a plan entitled "Plan of Land, Indian Pond Estates, IV, a subdivision located in Kingston, Massachusetts, (Plymouth County) Owner/Subdivider, High Pines Corporation, Westwood, MA 02090. Endorsed by the Kingston Planning Board, September 22, 1998. Recorded at the Plymouth County Registry of Deeds, Plymouth, MA. Plan number 98-746 (hereinafter, Indian Pond Estates, IV, Plan); and

WHEREAS, the Developer in addition to the creation of a residential community intends to create, operate and maintain a golf course with country club facilities on a portion of the subject premises for the sole and exclusive benefit of the Developer, its assigns, and its members and guests.

NOW, THEREFORE, to the end that the intended residential subdivision in Indian Pond Estates may become and be maintained as a more enjoyable place to live and for the benefit and general welfare of all, the following covenants, restrictions, conditions and agreements are hereby imposed on each of the following lots: Lots 4-44 through 4-71, Lots 4-117 through 4-134, and Lots 4-1 and 4-2, as shown on the Indian Pond Estates, IV Plan.

1. LOT SIZE AND SITE DIMENSIONS

No building or structure shall be erected, placed or permitted on any lot that contains an area of less than 40,000 square feet; nor shall any building or structure be located on any lot, except for corner lots, nearer than fifty (50) feet to any front street line, or nearer than thirty (30) feet to any side lot line or nearer than forty (40) feet to any rear lot line; except that for corner lots the front yard dimension of fifty (50) feet shall apply from both street lines and the side yard dimension of thirty (30) feet shall apply from all other lot lines. For purposes of this section, eaves, gutters, steps and bay windows shall not be considered part of the building or structure.

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FRED M. TONSHERG
52 MAIN ST.

KINGSTON MASS 02364

2. BUILDING AND STRUCTURES

No building or structure shall be erected, placed or permitted on any lot other than one single-family dwelling house and appurtenant out-buildings. For the purposes of this paragraph, appurtenant out-buildings shall include a tool-house or bath-house. No trailer, tent, shack, garage, barn, appurtenant building or other outbuilding shall be at any time be used either temporarily or permanently as a residence.

3. LIVING AREA

No building or structure shall be erected, placed or permitted on any lot unless said dwelling shall not have less than two thousand five hundred (2,500) square feet of living area, with an attached two car (2) garage, exclusive of basements, garages, decks, patios and porches.

4. APPROVAL OF PLANS AND SPECIFICATIONS

In order to promote harmony of design, no dwelling, building, garage, porch, solarium, terrace, fence, wall or other structure shall be commenced, erected, placed or permitted, nor shall any addition to or change or alteration therein, be made, until plans and specifications showing the nature, kind, shape, height, materials, floor plans, exterior color scheme, locations, placement on lot, and the grading and landscaping plan of the lot to be built upon, shall have been submitted to the Developer who may designate one or more successors for the purpose of giving such approval. Such approval shall not be unreasonably withheld. It shall be a condition prior to the start of all original construction that approval be obtained concerning satisfactory completion of all terms of these covenants.

5. TREE CLEARING AND LANDSCAPE

For initial construction, not less than three percent (3%) of the cost of the lot shall be used for landscaping, exclusive of tree cutting, grading and loan; not more than \$1,000.00 expended for sod and or seeding, shall be applicable toward said minimum amount required. No material of any kind, ie. loam, sand, fill, gravel etc. shall not be removed from the development without the permission from the Developer. No living trees shall be removed except as necessary for building driveways, landscaping or normal forestry thinning practices, except as approved by the Developer. Not more than twelve (12) months after issuance of a building permit or structure on a lot, those portions of the lot not covered by buildings or structures shall be put in neat and orderly condition, free from uprooted stumps, construction materials and other debris. Any areas barred of their natural growth during construction shall be covered with established pine bark mulch, grass, and or plants. Wood chips shall not be used in any area of any lot as ground cover for any other purpose.

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6. TIME FOR COMPLETION

Initial construction, placement or erection of dwelling on any lot shall be completed in accordance with approvals obtained pursuant to Paragraph 4 above within twelve (12) months for the time a building permit is issued from the Town of Kingston, or within one (1) year from time of purchase of land. For purposes of this paragraph, initial construction, placement or erection of a dwelling shall include all phases of construction and in addition, driveway, exterior painting, grading and landscaping. In the event poor or unsatisfactory weather conditions prevent completion of driveway, exterior painting, grading or landscaping, a written extension shall be obtained by the Developer, said extension shall not be unreasonably withheld, and shall specify a reasonable period of not more than six (6) months extended time for completion.

7. DRIVEWAYS

All driveways shall be constructed of asphalt or concrete.

8. VEHICLES AND EQUIPMENT

No commercial truck, machinery, construction equipment, unregistered motor vehicles, trailers of any kind, or other unsightly or noisy vehicle shall be stored or parked on any lot, except that such vehicles and equipment are permitted as necessary for construction of buildings approved in accordance with the provisions of Paragraph 4 above. No motor scooter, "fift bike", trail bike, motorcycle or other vehicles shall be permitted on any lot, roadway or pathway. Boats, campers and trailers shall be concealed in a garage.

9. ACTIVITIES

No obnoxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the residential neighborhood. No business, trade or profession shall be conducted from any building on any lot without express permission from Developer.

10. ANIMALS

No animals, horses, ponies, swine, livestock, poultry or other barnyard animals of any kind shall be raised, bred or kept on any lot for commercial or non-commercial purposes, except that properly licensed dogs, cats and common household pets may be kept provided they are not bred or maintained for commercial purposes. Dogs shall be leashed and not permitted to roam.

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11. REFUSE

All rubbish, trash and other refuse shall be kept in suitable containers to the rear of the dwelling located thereon or within them, except for the day appointed for collection by private company, municipality or other collection authority, and then only in suitable containers. For purposes of this paragraph, suitable containers shall be covered metal or plastic trash barrels; loose bags are not suitable containers.

12. SIGNS

No signs shall be displayed on any lot except for signs approved by Developer..

13. ANTENNAS

No exterior antennas or aerial, satellite, radio or television dish equipment, windmills or towers shall be permitted on any lot without permission of the Developer.

14. POOLS

No in-ground pool shall be located toward the forward portion of any lot beyond a line parallel and tangential with the rear of the residential dwelling located thereon. For purposes of this paragraph, "rear of the residential dwelling" shall not include patio, deck, porch and sun rooms. **NO ABOVE GROUND POOLS SHALL BE ALLOWED AT ALL.**

15. STORAGE TANKS

No tanks for the storage of fuel may be maintained on any lot unless it is maintained underground or within a building.

16. GOLF COURSE LOTS

Any lot adjacent to or in close proximity to golf course areas shall be subject to a perpetual right and easement for the sole and exclusive use of providing reasonable foot access to golfers to retrieve errant golf balls on unimproved areas of such residential lots. Boundary or peripheral fences or walls on such lots shall be prohibited. For purposes of this section only, the golf course area shall mean Lots 4-105 as shown on Indian Pond Estates IV, Plan.

17. DURATION

The covenants and restrictions of this declaration shall run with and bind with the land, and shall inure to the benefit of and be enforceable by the owner of any land subject to this declaration and their heirs, successors, and assigns for a term of thirty (30) years from the date of this declaration is recorded, after which time said covenants and restrictions may be extended for further periods not to exceed twenty (20) years at a time as set forth and in accordance with M.G.L.A. Chapter 184, Section 27.

DN 170-197834

18. WAIVER

A waiver by owner of the covenants and restrictions contained in this declaration shall not constitute a waiver of the right to enforce any such covenants or restrictions by another owner thereafter.

19. INVALIDITY AND SEVERABILITY

If any covenant or restriction, or part thereof, contained in this declaration shall be held invalid by any administrative body or court, such invalidity shall not affect any other covenant or restriction herein contained, or any part thereof.

20. RESERVATION OF RIGHTS BY DEVELOPER

Developer expressly reserves and retains for itself, its successors and assigns the right to create, operate and maintain a golf course and country club facilities, including but not limited to, maintenance and irrigation facilities, parking area, recreational, fitness and golf teaching facilities on all portions of the land as shown on Indian Pond Estates IV, Plan other than those expressly subjected to this Declaration.

Developer further retains and reserves the right to amend this Declaration and record such amendment, provided that no such amendment shall substantially derogate from the original intent and purpose of this Declaration.

IN WITNESS WHEREOF, said FREDERICK M. TONSBURG and HIGH PINES CORPORATION have caused this Declaration to be signed under seal, acknowledged, and recorded with the Plymouth County Registry of Deeds, this 4th day of January in the year 1999.


FREDERICK M. TONSBURG

and

HIGH PINES CORPORATION

BY: 
RICHARD J. PLANNY, JR.

Commonwealth of Mass,

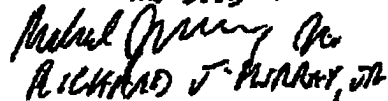
on this 5th day of January 1999 before me personally appeared

FREDERICK M. TONSBURG known to be the person described in
and who executed the foregoing instrument and acknowledged that
he executed the same as his free act and deed.

NOT COMMISSION

EXPIRES 10/13/2000

← END OF INSTRUMENT →


RICHARD J. PLANNY, JR.

E & A Tenczar
Exhibit No. 5
JAL - 10/28/2020

6380
Received & Recorded
PLYMOUTH COUNTY
REGISTRY OF DEEDS
19 JAN 2001 02:02PM
JOHN R. BUCKLEY, JR.
REGISTER
Bk 19277 Pg 214-215

AMENDMENT TO DECLARATION OF
PROTECTIVE COVENANTS AND RESTRICTIONS
Part IV

Whereas, Frederick M. Tensberg, High Pines Corporation, and Indian Pond Country Club, Inc., (hereinafter collectively referred to as the "Developer"), with a place of business at 52 Main Street, Kingston, Massachusetts, are the owners of certain parcels of land situated in Kingston, Plymouth County, Massachusetts, do hereby amend the Declaration of Protective Covenants and Restrictions dated January, 1999, recorded with the Plymouth County Registry of Deeds in Book 17019, Page 27 and filed with the Plymouth County Registry District of the Land Court as Document No. 441205, by the following:

Paragraph 16. GOLF COURSE LOTS

Those lots described herein as "golf course lots" are those lots in close proximity to parcel 74-4 as shown on the plan referenced herein. Those lots are shown as Lots 4-71 through 4-103, inclusive and Lots 4-107 through Lots 4-134, inclusive, all as shown on Plan No. 746 of 1998, recorded with Plymouth Deeds in Plan Book 41, Page 780.

The "golf course lots" are also subject to the following:

- a. The developer has the right to reserve or grant easements for the benefit of the owner of the golf course for the reasonable and efficient operation and maintenance of the golf course and its facilities in a customary and usual manner.
- b. The developer reserves the right to maintain, replace, remove or add to the vegetation on the golf course lots in those areas in close proximity to the golf course.
- c. The perpetual right and easement for the sole and exclusive use of providing reasonable foot access for golfers to retrieve errant golf balls on unimproved areas of such lots.
- d. No above ground pools are allowed. No in-ground pools shall be constructed on any lot adjacent to the golf course.
- e. No outbuildings, swing sets, play sets or clotheslines shall be allowed on the golf course lots without the express written consent of the developer.
- f. Owners of any golf course lots will use their best efforts to minimize any adverse impact to the golf course, including a) working cooperatively with the developer to schedule any work to be done on the golf course lots. In addition the owners will not perform any non-emergency work on such lots during (a) weekend

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Plymouth, Mass. 02360

playing hours and (b) at other times when such work may unreasonably interfere with the use of the golf course.

All other terms and provisions remain unchanged and in full force and effect.

IN WITNESS WHEREOF, the said Frederick M. Tonsberg, individually and as President and Treasurer of High Pines Corporation has caused this instrument to be signed and sealed and the corporate seal to be affixed hereto, this 5th day of January, 2001.

High Pines Corporation

By: Frederick M. Tonsberg President

COMMONWEALTH OF MASSACHUSETTS

Plymouth, ss

January 5, 2001

Then personally appeared the above named Frederick M. Tonsberg, and acknowledged the foregoing instrument to be his free act and deed, before me,

Maria J. Tracy
Notary Public
My Comm. Exp. 2-16-07

Maria Tracy
NOTARY PUBLIC
My commission expires Feb. 16, 2007