

Goodnow Flow Decision: Court Upholds Implied-in-Fact Contract Theory to Recover Unpaid Dues

by David O. Wright, Esq., NYSFOLA General Counsel

The Supreme Court for Essex County recently rendered a major victory for a lake association, seeking to recover unpaid dues from homeowners, where there were no enforceable covenants requiring them to pay. In *Goodnow Flow Association, Inc. v. Graves*, Essex Co. Index No. 493-2013, Justice Thomas D. Buchanan granted summary judgment (a judgment entered on the papers, without a trial) to a lake association seeking to recover dues on the theory that the

Just to place this issue in context, let's examine the background to this problem. Where a lake association has been established with properly-drafted, and properly-recorded covenants in the real estate records, there's generally little difficulty getting reluctant property owners to pay their dues to help maintain the lake association. While, there are still issues concerning the fairness of the charges, amounts due and so forth, there is no real dispute that a property encumbered by valid covenants has to pay.

The problem is that in many lake communities, there are no written covenants. Some communities began with covenants, but they have since expired due to the passage of time. Others, such as one surrounding the Goodnow Flow, were established before legal practices had evolved to a point of utilizing documents to memorialize the lot owners' implicit agreement to share in community expenses. So, no covenants were executed even though all the lot owners were well aware of the benefits provided by the association when they were purchased. Either way, there is no current, written document binding lot owners to pay dues. What to do then? The New York courts devel-

oped a doctrine of "implied contract" as one legal basis for a homeowner association, even where there were no covenants, to collect dues from property owners benefitting from the association's activities. As Justice Buchanan explained:

"[In] *Seaview Associates v. Williams*, 69 NY2d 987 (1987), the Court of Appeals [New York's highest court] held that the owner of property within a community who has knowledge that a community homeowners' association provides facilities and services for the benefit of community residents



Goodnow Flow in Essex County - Photo courtesy of Drew Cullen, President, Goodnow Flow Association

"defendant, as owner of a lake-front lot ... benefits from services provided" by the lake association.

This has been a hot topic within NYSFOLA for the many years I have served as its (unpaid) General Counsel, and as a presenter at the Lake Law sessions at our annual conferences. I have also been asked to speak on this topic at NALMS conferences, within and outside New York. Clearly, it's a topic that's timely, and indeed, critical to the finances of hard-pressed volunteers attempting to manage our precious lake resources.

Background: The Problem

is obligated under an implied-in-fact contract to pay a proportionate share of the full cost of those facilities and services, even if the owner is not a member of the association.”

And, as I quote in my “Lake Law” publication:

“The resulting implied-in-fact contract includes the obligation to pay a proportionate share of the full cost of maintaining those facilities and services, not merely the reasonable value of those actually used by any particular resident.”

This rationale has been applied in the context of lake associations. See *Tides Property Owners Assn. v. Paolillo*, 56 A.D.2d 888 (2d Dept. 1977)(property owner can be required to pay dues for community beach); *Mohegan Colony Assn. v. Picone*, 61 A.D.2d 809 (2d Dept. 1978) (“Although the express covenants have expired, the defendants are liable in quasi-contract and implied contract if they have had the use and benefit of the common beach facilities”).

Many associations were shocked by the decision in *Yankee Lake Preservation Assn., Inc. v. Stein*, 68 A.D.3d 1603 (3d Dept. 2009), in which an appellate court ruled squarely AGAINST a lake association attempting to use the *Seaview* implied contract rationale, and affirmed the lower court’s award of attorney fees against the association for frivolous litigation. In that case, however, the facts were somewhat unique. For example, some of the defendant homeowners had owned property on the lake long before the lake association even came into existence. It was therefore difficult to fashion an “implied contract” that, simply by staying in

their homes, they somehow agreed to pay due to a newly-created association. (Unfortunately, several alternative theories were not discussed by the court in that case, such as unjust enrichment or quasi-contract).

Thus, the *Goodnow Flow* decision comes as a relief -- we can reassure our member associations that the courts have not departed from the general rule of case law spanning more than forty years, and will find an implied contract where the lot owners were aware of the benefits provided by an association when they purchased, and that the *Yankee Lake* case was indeed decided on a unique set of facts. The defendant has filed a Notice of Appeal, so the issue may again be presented to the appellate court. NYSFOLA intends to seek to intervene and to advocate for the lake association, should the appeal be pursued.

The attorneys for the Goodnow Flow Association were Walsh & Walsh, LLP, 42 Long Alley, Saratoga Springs NY 12866. They can be reached at (518) 583-0171. Attorney Joseph M. Walsh handled this case. Their web site is www.spalaw.net. A general practice law firm, Walsh & Walsh has concentrations in real estate, banking, creditors’ rights, estate planning, business law, homeowners’ and condominium associations, civil litigation, matrimonial law, municipal finance, planning and zoning and probate.

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NYSFOLA BOD Thanks Rena Doing, Plymouth Reservoir Lot Owners Association

The NYSFOLA Board of Directors would like to thank long time member Rena Doing for her dedication to NYSFOLA. It is with regret that we recently received her letter of resignation from the Board of Directors. Rena has been both a long time Board member and CSLAP volunteer, and we wish her all the best with her future endeavors.

Would You Like to Serve on the Board of Directors?

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Interested? Contact Nancy Mueller fola@nysfola.org.