

NEW YORK STATE SUPREME COURT
COUNTY OF JEFFERSON

-----X
IVES HILL COUNTRY CLUB, INC. and PRIME, L.L.C.,

Plaintiffs,

-against-

VERIFIED COMPLAINT

Index No.:

Purchased:

CITY OF WATERTOWN, JOSEPH BUTLER, JR., in his
official capacity as Mayor, RYAN J. HENRY-
WILKINSON, CODY J. HORBACZ, LISA A.
L'HUILLIER RUGGIERO, and MARK C. WALCZYK in
their official capacities as Council Members, the CITY
COUNCIL, RICHARD FINN in his official capacity as
City Manager, and WATERTOWN GOLF CLUB,
INCORPORATED,

Defendants.

-----X

Plaintiffs, IVES HILL COUNTRY CLUB, INC. and PRIME, L.L.C., by their attorneys
LEVENTHAL, MULLANEY & BLINKOFF, LLP, for their complaint, state the following on
information and belief, based on records maintained by the City of Watertown:

PRELIMINARY STATEMENT

1. Plaintiffs seek a judgment declaring that a lease of real property owned by the
City of Watertown for use by the Watertown Golf Club is null, void and wholly unenforceable
because, among other things, it was approved despite a conflict of interest of the then Mayor that
violated the statewide code of ethics applicable to local municipal officers and employees, in that
the Mayor was then a member of the Board of Directors of the Watertown Golf Club and thus
derived a benefit as a result of the lease.

THE PARTIES

2. Plaintiff IVES HILL COUNTRY CLUB, INC ("Ives Hill") is a domestic
corporation engaged in the business of owning and operating an eighteen-hole golf course and
restaurant, doing business as Ives Hill Country Club, in the City and Town of Watertown.

3. Plaintiff PRIME LLC ("Prime") is a domestic limited liability company engaged
in the business of owning real property, including a certain parcels in the City and Town of
Watertown.

4. Prime is the owner and lessor of the real property in the City and Town of Watertown leased to Ives Hill for its use as an 18-hole golf course and restaurant.

5. Defendant CITY OF WATERTOWN (the “City”) is an incorporated municipality established pursuant to the laws of the State of New York, existing wholly within the County of Jefferson.

6. The City maintains its principal place of business at 245 Washington St, Watertown, New York.

7. Defendant JOSEPH BUTLER, JR. (the “Mayor”) is the Mayor of the City and a member of the City Council.

8. Defendants RYAN J. HENRY-WILKINSON, CODY J. HORBACZ, LISA A. L’HUIILLIER RUGGIERO, and MARK C. WALCZYK (individually and collectively, the “Council Members”) are the members of the Watertown City Council.

9. The WATERTOWN CITY COUNCIL (the “City Council”) is the governing body of the City vested, among other things, with the power to approve City contracts.

10. Defendant RICHARD FINN (the “City Manager”) is the City Manager of the City.

11. Defendant WATERTOWN GOLF CLUB, INCORPORATED (“Watertown Golf Club”) is a domestic corporation engaged in the business of owning and leasing land in the City, and operating that land as an 18-hole golf course and restaurant.

12. Watertown Golf Club maintains its principal place of business at 1 Thompson Park, Watertown, New York.

FACTS COMMON TO ALL CAUSES OF ACTION

13. In 1917, a gift of land was made to the City for a portion of what came to be known as Thompson Park.

14. A deed restriction provided that the use of the demised premises for any purpose other than a public park would result in divestiture of the City’s title to the land.

15. A land acquisition in 1946 increased the size of Thompson Park by one hundred and forty eight (148) acres.

16. Commencing on January 1, 1965, the City leased approximately 66.3 acres of the land acquired in 1946 to Watertown Golf Club for a term of twenty-one years expiring on December 31, 1985, thus enabling Watertown Golf Club to increase the size of its golf course from nine holes to eighteen holes.

17. Prime is the only owner of land in the City that, together with land in the Town of Watertown, is operated as an eighteen-hole golf course and restaurant; Ives Hill is the operator of that golf course and restaurant.

18. The Watertown Golf Club owns approximately 63.84 acres of land in the City, and leases 66.3 acres of land from the City, operating the two parcels together as an eighteen-hole golf course and restaurant.

19. Effective July 25, 1983, the State Legislature, with the approval of the Governor, belatedly and retroactively authorized the City to discontinue the use of the 66.3 acre parcel as parkland and to lease the land to Watertown Golf Club, and ratified the 1965 lease between the City and Watertown Golf Club.

20. The July 25, 1983 legislation provided, in pertinent part, that:

The City of Watertown is authorized and empowered to discontinue the use as park lands and to lease to the Watertown Golf Club, Inc., 66.3± acres located in the John C. Thompson Park in such city which was acquired by the city for park purposes and is no longer used or useful for such purpose, upon such terms and conditions as the governing body of such city shall deem in the best interest of such city. The lease of such lands entered into between such city and such Golf Club dated January first, 1965, and all acts done pursuant to the terms of such lease, are hereby ratified and affirmed.

21. The State legislature did not authorize or approve any subsequent lease agreements that the City and Watertown Golf Club entered into after expiration of the 1965 lease.

22. Prior to the expiration of the 1965 lease on December 31, 1985, the City entered into a new lease with Watertown Golf Club for a term of five years commencing on January 1, 1985 and expiring on December 31, 1989.

23. Thereafter, the City entered into a new lease with Watertown Golf Club for a term of ten years commencing on January 1, 1990 and expiring on December 31, 1999.

THE 2000 LEASE AGREEMENT

24. On January 1, 2000 Joseph M. Butler, Sr. took his oath of office swearing, among other things, to uphold the Constitution and laws of the State of New York, and commenced to serve as Mayor of the City.

25. On January 3, 2000, the City Council adopted a resolution removing Mayor Joseph M. Butler, Sr. from the City Board of Ethics, with his agreement and consent.

26. On January 18, 2000, the City Council adopted a resolution approving a lease agreement with Watertown Golf Club, as lessee (the "2000 Lease Agreement"), and authorizing the Mayor to execute the 2000 Lease Agreement on behalf of the City.

27. On January 18, 2000, then Mayor Joseph M. Butler, Sr. was a member of the City Council and, as such, had the power or duty to approve the 2000 Lease Agreement.

28. At the time the City approved and entered into the 2000 Lease Agreement, then Mayor Joseph Butler, Sr. was a member of the Board of Directors of Watertown Golf Club.

29. On January 18, 2000, then Mayor Joseph M. Butler, Sr. was the owner of one share of the outstanding corporate stock of Watertown Golf Club.

30. Then Mayor Joseph Butler, Sr. abstained from the vote by which the City Council approved the 2000 Lease Agreement, but participated in the discussions leading to the vote and executed the 2000 Lease Agreement on behalf of the City.

31. The Minutes of the January 18, 2000 Council meeting provide, in pertinent part, that:

Mayor Butler explained that the property being leased was at one time farmland. Now, the course is a state of the art facility and the improvements made on the leased portion are now owned by the City. He also remarked that the club never had a PILOT program and has always paid taxes and water bills.

32. Mayor Joseph M. Butler, Sr. did not properly recuse himself from the City Council's decision to approve the 2000 Lease agreement.

33. On January 21, 2000, the City, as lessor, entered into the 2000 Lease Agreement with Watertown Golf Club, as lessee, for the use of approximately 66.3 acres of land located within the boundaries of Thompson Park for use as a golf course and other incidental uses.

34. The 2000 Lease Agreement was for a term of ten years, expiring on December 31, 2009.

35. Mayor Joseph M. Butler, Sr. used his authority and influence as Mayor to increase the size of Watertown Golf Club and, in so doing, increased the value of Watertown Golf Club.

36. Thereafter, Joseph M. Butler, Sr. increased his ownership interest in Watertown Golf Club from one share representing less than 1% of the outstanding shares to 96 shares, representing 6% of the outstanding shares.

THE 2006 AMENDED LEASE AGREEMENT

37. On December 11, 2006, former Mayor Butler appeared before the City Council and participated in the discussions leading to the approval of an agreement that extended the term of the lease between the City and Watertown Golf Club (the "2006 Amended Lease Agreement").

38. The minutes of the December 11, 2006 meeting of the City Council provide, in pertinent part, that:

Council discussed various options the City has regarding a long-term lease of 66.3 acres of land between the Watertown Golf Club and the City of Watertown.... Mr. Butler told Council that in 1977 Pomeroy Associates assessed the land at the Golf Club.... Mr. Butler said that he recently reviewed the abstracts for the golf course. He added that the entire course is assessed for \$468,000 and the clubhouse is assessed for \$100,000. He continued saying that he is not looking for a subsidy but that market value is important. Mr. Butler told Council what the value or selling prices of other golf courses in the area were.

39. On December 18, 2006 the City Council adopted a resolution approving an extension of the unexpired 2000 Lease Agreement.

40. The December 18, 2006 Resolution stated, in pertinent part, that:

WHEREAS the parties have reached an Agreement on a long term lease, with a term of twenty-three (23) years, which incorporates the three (3) years remaining of the existing Agreement and adds an additional twenty (20) years,

41. On December 21, 2006, the City entered into the 2006 Amended Lease Agreement with Watertown Golf Club, for a term of twenty three years commencing on January 1, 2007 and ending on December 31, 2029.

42. The 2006 Amended Lease Agreement incorporated and extended the 2000 Lease Agreement for a period of twenty years beyond its original termination date, and continued all other terms and conditions, including an annual rent escalation of eight percent (8%).

43. The rent payable by Watertown Golf Club to the City for its business use and possession of 66.3 acres of City owned land as a golf course for the years 2015 through 2019 was and is \$9,318.00 per annum.

44. At the time the City entered into the 2006 Amended Lease Agreement, Joseph Butler, Sr. was no longer the Mayor.

45. At the time the City entered into the 2006 Amended Lease Agreement, former Mayor Joseph Butler, Sr. was the owner of 96 shares of corporate stock of Watertown Golf Club, representing six percent (6%) of the outstanding shares of the corporation.

46. At the time the City entered into the 2006 Amended Lease Agreement, former Mayor Joseph Butler, Sr. was a member of the Board of Directors of Watertown Golf Club.

47. At the time the City entered into the 2006 Amended Lease Agreement, Joseph Butler, Sr. was the President of Watertown Golf Club.

48. Joseph Butler, Sr. executed the 2006 Amended Lease Agreement on behalf of Watertown Golf Club.

THE 2011 NOTICE AND CURE AGREEMENT

49. On July 5, 2011, the City Council adopted a resolution approving a Notice and Cure Agreement with the Watertown Golf Club and the corporation's mortgagee, the Watertown Savings Bank (the "Notice and Cure Agreement").

50. On July 19, 2011, the City entered into the Notice and Cure Agreement.

51. In the Notice and Cure Agreement, the City agreed, among other things, to provide the Watertown Savings Bank with notice of any default by Watertown Golf Club in its leasehold obligations to the City, and to afford the Bank a thirty day opportunity to cure any such default.

52. The Notice and Cure Agreement was executed on behalf of Watertown Golf Club by its President, former Mayor Joseph Butler, Sr.

FIRST CAUSE OF ACTION

(Declaratory Judgment: N.Y. GML Sections 801, 804)

53. Plaintiffs repeat, reiterate and reallege the allegations set forth at preceding paragraphs "1" through "52".

54. As a member of the Board of Directors of Watertown Golf Club, then Mayor Joseph Butler, Sr., had an interest in the 2000 Lease Agreement.

55. New York General Municipal Law Section 800 (Definitions) provides, in pertinent part, that:

When used in this article and unless otherwise expressly stated or unless the context otherwise requires... "Interest" means a direct or indirect pecuniary or material benefit accruing to a municipal officer or employee as the result of a contract with the municipality which such officer or employee serves. *For the purposes of this article a municipal officer or employee shall be deemed to have an interest in the contract of... a corporation of which such officer or employee is ... [a] director....*

[Emphasis added].

56. As Mayor and as a member of the City Council, then Mayor Joseph Butler, Sr. had the power and duty to approve the 2000 Lease Agreement.

57. New York General Municipal Law Section 801 (Conflicts of Interest Prohibited) provides, in pertinent part, that:

Except as provided in section eight hundred two of this chapter, ... no municipal officer or employee shall have an interest in any contract with the municipality of which he is an officer or employee, when such officer or employee, *individually or as a member of a*

board, has the power or duty to (a) negotiate, prepare, authorize or approve the contract or authorize or approve payment thereunder (b) audit bills or claims under the contract, or (c) appoint an officer or employee who has any of the powers or duties set forth above....

[Emphasis added].

58. The 2000 Lease Agreement was prohibited by New York General Municipal Law Section 801.

59. At the time the City approved and entered into the 2000 Lease Agreement, then Mayor Joseph Butler, Sr., knew of the 2000 Lease Agreement.

60. At the time the City approved and entered into the 2000 Lease Agreement, then Mayor Joseph Butler, Sr., knew that he was the Mayor and a member of the Board of Directors of Watertown Golf Club.

61. New York General Municipal Law Section 804 provides:

Any contract willfully entered into by or with a municipality in which there is an interest prohibited by this article shall be null, void and wholly unenforceable.

62. The 2000 Lease Agreement was and is null, void and wholly unenforceable pursuant to General Municipal Law Section 804.

63. The 2006 Amended Lease Agreement, which incorporated and extended the 2000 Lease Agreement, was and is null, void and wholly unenforceable pursuant to New York General Municipal Law Section 804.

SECOND CAUSE OF ACTION

(Declaratory Judgment: Watertown Code of Ethics Section 32-3(H))

64. Plaintiffs repeat, reiterate and reallege the allegations set forth in the foregoing paragraphs "1" through "63".

65. Former Mayor Joseph Butler, Sr., as Mayor and member of the Board of Directors of Watertown Golf Club, personally participated in the discussions leading to the approval of the 2000 Lease Agreement, and in its execution on behalf of the City.

66. By signing and causing the signed 2006 Amended Lease Agreement to be submitted on behalf of Watertown Golf Club, former Mayor Joseph Butler, Sr., appeared before the City Council and City Manager in relation to the 2000 Lease Agreement, because the 2006 Amended Lease Agreement incorporated and extended the 2000 Lease Agreement.

67. Former Mayor Joseph Butler, Sr. appeared before the City Council and City Manager in relation to the 2000 Lease Agreement by signing and submitting the 2011 Notice and Cure Agreement on behalf of Watertown Golf Club.

68. The City Code of Ethics provides at Section 32-3 (Enumerated Standards), subsection “H”, that:

[No City officer or employee shall]... after the termination of service or employment with... [the City], appear before any board or agency of the City of Watertown in relation to any case, proceeding or application *in which he personally participated during the period of his service* or employment or which was under his active consideration.

[Emphasis added].

69. The Court should declare that the 2000 Lease Agreement, as incorporated in and extended by the 2006 Amended Lease Agreement, is null, void and wholly unenforceable.

THIRD CAUSE OF ACTION (Declaratory Judgment: Common Law Conflict of Interest)

70. Plaintiffs repeat, reiterate and reallege the allegations set forth in the foregoing paragraphs “1” through “69”.

71. Then Mayor Joseph Butler, Sr. influenced the City Council in its approval of the 2000 Lease Agreement by personally participating in the discussions leading to its approval.

72. The Court should declare that the 2000 Lease Agreement, as incorporated in and extended by the 2006 Amended Lease Agreement, is null, void and wholly unenforceable.

FOURTH CAUSE OF ACTION (Declaratory Judgment: N.Y. Constitution Article VIII, Section 1)

73. Plaintiffs repeat, reiterate and reallege the allegations set forth in the foregoing paragraphs “1” through “72”.

74. The City approved and at all relevant times accepted, and Watertown Golf Club paid, below market rent for the City-owned land that is leased to Watertown Golf Club.

75. At all relevant times, the City under-assessed the land owned by Watertown Golf Club and the City-owned land that is leased to Watertown Golf Club.

76. The City has provided Watertown Golf Club with free advertising on the City website.

77. The City has not received adequate compensation for the benefits and services that it provided to Watertown Golf Club.

78. The Mayor and the City Council swore, in their oaths of office, to uphold the Constitution of the State of New York.

79. The Constitution of the State of New York, Article VIII, Section 1, forbids gifts of public property to any individual or private corporation or association.

80. The Court should declare that the 2000 Lease Agreement, as incorporated in and extended by the 2006 Amended Lease Agreement, is null, void and wholly unenforceable as a gift of public property in violation of New York Constitution Article VIII, Section 1.

FIFTH CAUSE OF ACTION
(Declaratory Judgment: Public Trust Doctrine)

81. Plaintiffs repeat, reiterate and reallege the allegations set forth in the foregoing paragraphs "1" through "80".

82. The 2000 Lease Agreement was not authorized by the State Legislature or approved by the Governor.


83. The 2006 Amended Lease Agreement was not authorized by the State Legislature or approved by the Governor.

84. The Court should declare that the 2000 Lease Agreement, as incorporated in and extended by the 2006 Amended Lease Agreement, is null, void and wholly unenforceable as an unlawful use of parkland in violation of the public trust doctrine.

WHEREFORE Plaintiff demands judgment against the defendants declaring that the 2000 Lease Agreement as incorporated in, and extended by, the 2006 Amended Lease Agreement is null, void and wholly unenforceable; and granting such other and further relief as the Court deems just and proper, together with the costs and disbursements of this action.

Dated: Roslyn, New York
November 12, 2018

LEVENTHAL, MULLANEY &
BLINKOFF, LLP
Attorneys for Plaintiffs

By: 

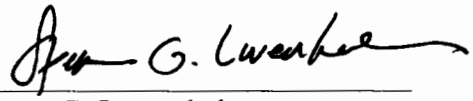
Steven G. Leventhal
15 Remsen Avenue
(516) 484-5440

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF NASSAU) ss.:

I, STEVEN G. LEVENTHAL, being duly sworn, depose and say: I am the attorney of record for the plaintiffs in the within action. My office for the practice of law is located at 15 Remsen Avenue, Roslyn, NY 11576, which is in the County of Nassau. This verification is made by me because the plaintiffs are not within the County of Nassau.

I have read the foregoing Complaint and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true based on records maintained by the City of Watertown.



Steven G. Leventhal

Sworn to before me on this
12th day of November, 2018



Notary Public, State of New York

Thomas J. Mullaney
NOTARY PUBLIC, State of New York
No. 01MU4816770
Qualified in Nassau County
Commission Expires Jan. 31, 20 19