

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

JOSEPH J. RODGERS III; KEKIN A. SHAH; :
WILLIAM G. CIOFFI; DEAN E. MARTINS :
MARK P. WELCH; LOUIS FRESELONE; :
SCOTT DESILETS; and JASON KALIN, :

Plaintiffs :

vs. :

C.A. No.: PC 20-

METACOMET PROPERTY COMPANY, LLC, :
doing business as METACOMET GOLF CLUB; :
and J.L. MARSHALL & SONS, INC., :

Defendant :

COMPLAINT

Parties

1. Plaintiff, Joseph J. Rodgers III ("Rodgers") is a domiciled resident and inhabitant of the State of Rhode Island, Providence County.

2. Plaintiff, Kekin A. Shah ("Shah") is a domiciled resident and inhabitant of the State of Rhode Island, Newport County.

3. Plaintiff, William G. Cioffi ("Cioffi") is a domiciled resident and inhabitant of the State of Rhode Island, Kent County.

4. Plaintiff, Dean E. Martins ("Martins") is a domiciled resident and inhabitant of the State of Rhode Island, Newport County.

5. Plaintiff, Mark P. Welch ("Welch") is a domiciled resident and inhabitant of the

State of Rhode Island, Providence County.

6. Plaintiff, Louis Freselone ("Freselone") is a domiciled resident and inhabitant of the State of Rhode Island, Kent County.

7. Plaintiff, Scott Desilets ("Desilets") is a domiciled resident and inhabitant of the State of Rhode Island, Providence County.

8. Plaintiff, Jason Kalin ("Kalin") is a domiciled resident and inhabitant of the State of Rhode Island, Providence County.

9. Upon information and belief, Defendant, Metacomet Property Company, LLC, doing business as Metacomet Golf Club ("MPC") is a duly organized and existing limited liability company pursuant to the laws of the State of Rhode Island, having a principal place of business located at 500 Veterans Memorial Parkway, East Providence, Rhode Island (the "Property"). At all times relevant hereto, MTC owns and operates Metacomet Golf Club (the "Club"), and, further, is the record or title owner of the Property.

10. Upon information and belief, Defendant, J.L. Marshall & Sons, Inc. ("Marshall") is a duly organized and existing corporation pursuant to the laws of the State of Rhode Island, having a principal place of business located at 40 Westminster Street, Providence, Rhode Island. Marshall is named herein as otherwise required by R.I. Gen. Laws §9-30-1, *et seq.*

Jurisdiction

11. This Court has jurisdiction with regard to the above-entitled action pursuant to R.I. Gen. Laws §§8-2-13, 8-2-14 and 9-30-1, *et seq.*, respectively.

Allegation Common to All Counts

12. At all times relevant hereto, Rodgers, Shah, Cioffi, Martins, Welch, Freselone, Desilets, and Kalin (collectively, the “Members”), and each of them, are active dues paying members of the Club, including without limitation on or about November 18, 2019, and prior thereto.

13. Upon information and belief, in or about April, 2019, MPC purchased the Property and the Club, respectively.

14. Since on or about April 8, 2019, up through, and including the present, MPC operated the Club for the benefit of the Members, and other dues paying Club members.

15. From April 8, 2019 up and through the present time, Metacomet has operated a golf club facility at the Property for the benefit of the Plaintiffs and other dues paying club members.

16. On or about November 18, 2019, MPC convened, and conducted a so-called “town hall” style meeting of the dues paying members of the Club, which included the Members, in order to “unveil”, describe and/or delineate and otherwise set forth MPC’s operational plans, parameters and amenities relative to the Club for the 2020 golf year, which commenced in or about January, 2020 (the “Meeting”).

17. At the Meeting, the five (5) Members of MPC, *to wit*, Steve Napoli, Karl Augenstein, Brad Faxon, Jr., Tim Fay, and Brandon VanDeventer (the “Principals”) were present and participated either in person or via telephone conference.

18. The Principals undertook, and gave a visual and audio presentation to the dues paying members of the Club, including the Members, describing in detail the intended golf operations for the Club for the 2020 golf year, which included, among other things, the costs and expenses to be incurred by the Members and other dues paying members should any remain at the Club beyond January 1, 2020, the golf course and tournament schedule for the Club, specific improvements to be made to the Property, including the golf course, and other operation intentions, plans and/or parameters for the Club for the 2020 golf year.

19. Further, at the Meeting the Principals set forth the payment structure for the Members' and other dues paying members of the Club for the 2020 annual dues and assessments, which included a lump sum option that would result in a discount for the benefit of any dues paying member of the Club who took advantage of the same.

20. On or about November 27, 2019, MPC, by and through its Principals, forwarded to all dues paying members of the Club, including the Members, correspondence intended to summarize or highlight, in writing, the salient points of MPC's presentation at the Meeting (the "November 27th Correspondence").

21. Among other things, the November 27th Correspondence, again, detailed the intended golf operations for the 2020 golf year, the costs to be incurred by the dues paying members of the Club, including the Members, the golf and tournament schedule for the upcoming golf season, improvements to be made to the Property, including the golf course, and the payments structure for the dues paying members' annual dues and/or assessments.

22. Even more, the November 27th Correspondence expressly stated that should any

dues paying member of the Club, including the Members, desire to remain a member in good standing at the Club through December 31, 2020, then he or she would be required to remit and pay to the Club the annual fee or assessment of Three Thousand Eight Hundred and 00/100 Dollars (\$3,800.00) pursuant to the payment terms set forth at the Meeting, and as prescribed in the November 27th Correspondence.

23. In reasonable reliance, and based upon MPC's presentation at the Meeting, as well as its November 27th Correspondence, none of the Members resigned from the Club, and, in fact, each paid in full the required Three Thousand Eight Hundred and 00/100 Dollars (\$3,800.00) 2020 annual dues for their continued Club memberships.

24. Without any prior notice, on or about February 20, 2020, MPC advised the Members, as well as the other dues paying members of the Club that it was engaged in negotiations to sell the Property to a third party. At that time, MPC failed and/or refused to advise the Club members that it intended to sell the Property for a proposed mixed-use development, and, further, that it would be ceasing operations at some point early into the 2020 golf season.

25. On or about February 27, 2020, MPC provided notice to the Members, as well as the other dues paying members of the Club that it had entered into a purchase and sale agreement with Marshall for the sale of the Property. Further, as part of said notification, MPC advised the Members, as well as the other members of the Club that it anticipated the winding down and ceasing operations at the golf course following the closing upon the purchase and sale of the Property, which was anticipated to occur in or about June, 2020.

26. At or about the same time, Marshall released a media statement confirming that it was the prospective acquiring party of the Property, that it had, in fact, entered into a purchase and sale agreement for the Property with MPC, and that it intended to develop the Property as a mixed-use development, and did not intend to operate the Club.

27. Ostensibly, in anticipation of closing its purchase and sale real estate transaction with Marshall, upon information and belief, MPC has begun to refund portions of the Members', as well as other dues paying members of the Club's 2020 annual dues that would be applicable to and/or in consideration of their Club membership post-June, 2020.

Count I - Declaratory Judgment & Injunctive Relief

28. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 27 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

29. The rights, status and legal standing of parties are governed by their course of conduct and dealing, the parties' contract and/or agreement, R.I. Gen. Laws, common law, and applicable case law.

30. A dispute has arisen in connection herewith.

31. The Members are without an adequate remedy at law.

32. Absent injunctive relief, the Members, and each of them, will be irreparably harmed.

33. A balancing of the equities weighs in favor of the injunctive relief requested.

34. The Members have reasonably relied upon the parties' course of conduct and

dealing, the parties' contract and/or agreement, R.I. Gen. Laws, common law and applicable case law respectively, to their respective detriment.

WHEREFORE, the Members, and each of them, pray that this Court enter an Order having the effect of a final judgment that provides as follows:

- a) A declaration, pursuant to R.I. Gen. Laws §9-30-1, *et seq.*, that MPC and the Members, and each of them, entered into a legal valid, binding and enforceable contract, pursuant to applicable Rhode Island law.
- b) A declaration, pursuant to R.I. Gen. Laws §9-30-1, *et seq.*, that MPC is in breach of its contract with the Members.
- c) A declaration, pursuant to R.I. Gen. Laws §9-30-1, *et seq.*, that MPC's breach of its contract with the Members is willful, wanton and intentional.
- d) A mandatory injunction compelling MPC to comply and/or perform, in all material respects, with the exact terms and conditions of its contract with the Members, including without limitation operating a fully functioning and properly appointed golf course, as well as the Club with appropriate amenities for the entirety of the 2020 golf season.
- e) A temporary, preliminary and permanent injunction restraining and enjoining MPC from consummating the proposed purchase and sale real estate transaction with Marshall unless and until MPC has fulfilled its contractual obligations to the Members.
- f) An award of punitive damages in favor of Members, and each of them,

and against MPC, as a result of MPC's willful, wanton and intentionally wrongful conduct *vis-a-vis* the Members and their contract with MPC.

- g) An award to Members, and each of them, of any and all costs and expenses incurred by the Members in the preparation, and prosecution of the within Complaint, including without limitation any and all attorneys' fees.
- h) An award to the Members, and each of them, of such other further relief as this Court may deem fair, just and reasonable.

Count II - Breach of Contract

35. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 34 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

36. MPC and the Members entered into a legal valid, binding and enforceable contract with regard to the operation of the Club and golf course for the 2020 golf season.

37. The Members, and each of them, have performed pursuant to their contract with MPC.

38. MPC has breached its contract with the Members.

39. As a direct and proximate result of MPC's breach of its contract with the Members, the Members, and each of them, have been, and continue to be damaged, harmed and/or injured.

40. There exists no justiciable issue of either law or fact, and MPC's breach of its

contract with the Members is wholly unjustified.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against MPC, in an amount to be proven at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees pursuant to R.I. Gen. Laws §9-45-1, and that this Court award to the Members such other further relief as this Court may deem fair, just and reasonable.

Count III - Breach of Duty of Good Faith & Fair Dealing

41. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 40 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

42. Inherent in every contractual relationship is the parties obligation and duty of good faith and fair dealing with each other.

43. MPC breached its duty of good faith and fair dealing with the Members, and each of them.

44. As a direct and proximate result of MPC's breach of its contract with the Members, the Members, and each of them, have been, and continue to be damaged, harmed and/or injured.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against MPC, in an amount to be proven

at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees, and that this Court award to the Members such other further relief as this Court may deem fair, just and reasonable.

Count IV - Misrepresentation

45. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 44 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

46. MPC made material misrepresentations of fact to the Members with regard to the Club, and operation of the golf course for the 2020 golf season.

47. The Members reasonable relied upon said representations of MPC to their respective detriment.

48. As a direct and proximate result of MPC's wrongful conduct, the Members, and each of them, have been, and continue to be damaged, harmed and/or injured.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against MPC, in an amount to be proven at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees, and that this Court award to the Members such other further relief as this Court may deem fair, just and reasonable.

Count V - Fraud

49. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 48 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

50. During the Meeting, and as a result of the November 27th Correspondence, MPC, by and trough its Principals, made certain specific statements and/or representations, as well as gave certain assurances to the Members, as detailed hereinabove, with regard to the operation of the Club and the golf course for the 2020 golf season.

51. The Members, and each of them, reasonable relied upon MPC's intentionally misleading and/or fraudulent statements to their respective detriment in performing pursuant to their contract with MPC.

52. As a direct and proximate result of MPC's wrongful conduct, the Members, and each of them, have been, and continue to be damaged, harmed and/or injured.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against MPC, in an amount to be proven at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees, an award of punitive damages in favor of Members, and each of them, and against MPC, as a result of MPC's willful, wanton and intentionally wrongful conduct *vis-a-vis* the Members and their representations, statements and/or assurances thereto, and that this Court award to the Members such other further relief as this Court may

deem fair, just and reasonable.

Count VI - Unjust Enrichment

53. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 52 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

54. In performing pursuant to their contract with MPC, the Members bestowed a measurable value upon MPC.

55. Notwithstanding their performance pursuant to their contract with MPC, the Members have not and/or will not receive the benefit of the bargain with MPC.

56. MPC has benefitted, and continues to benefit, from the Members' performance pursuant to their contract with MPC.

57. It would be inequitable for MPC to retain the benefit and value of its contract with the Members without providing the Members with the Club and golf course for the 2020 golf season.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against MPC, in an amount to be proven at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees, and that this Court award to the Members such other further relief as this Court may deem fair, just and reasonable.

Count VII - Tortious Interference with Contract

58. The Members reaver and reallege the allegations and averments set forth in Paragraphs 1 through 57 above as if the same were stated more fully herein, and, further incorporates the same herein by reference.

59. Marshall knew or should have known of MPC's contractual relationship with the Members, as well as the other dues paying members of the Club.

60. Marshall has and/or will tortuously interfered with said contract.

61. Said tortious interference is willful and knowing.

62. As a direct and proximate result of Marshall's tortious conduct, the Members, and each of them, have been, and continue to be damaged, harmed and/or injured.

WHEREFORE, the Members, and each of them, respectfully pray that this Court enter judgment in favor of Members, and each of them, and against Marshall, in an amount to be proven at trial, together with legal interest thereon, that this Court award to the Members any and all costs and expenses incurred in the preparation and prosecution of the within Complaint, including without limitation attorneys' fees, and that this Court award to the Members such other further relief as this Court may deem fair, just and reasonable.

Respectfully submitted,

Joseph F. Rodgers III; Kekan A. Shah;
William G. Cioffi; Dean E. Martins;
Mark P. Welch; Louis Freselone;
Scott Desilets; & Jason Kalin

By their Attorneys,

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