

COMMONWEALTH OF PENNSYLVANIA

DR. R. SQUIER BALL : BEFORE THE BOARD OF CLAIMS  
: :  
VS. : :  
: :  
COMMONWEALTH OF PENNSYLVANIA, :  
STATE SYSTEM OF HIGHER EDUCATION, :  
EAST STROUDSBURG UNIVERSITY OF PA : DOCKET NO. 2687

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**FINDINGS OF FACT**

1. Dr. R. Squier Ball, (hereinafter “Dr. Ball”), Claimant in this case, is an adult individual with a mailing address of R.D. 5, Box 5530, East Stroudsburg, PA 18301. (Stipulation of Fact No. 1)

2. The Respondent is the Commonwealth of Pennsylvania, State System of Higher Education, East Stroudsburg University of PA, with a mailing address of 200 Prospect Street, East Stroudsburg, PA 18301. (Stipulation of Fact No. 2)

3. Dr. Ball administers an annual summer diving camp which is ordinarily held at the East Stroudsburg University swimming pool. (Stipulation of Fact No. 3)

4. Dr. Ball has been administering a diving camp since the early 1980's. (Stipulation of Fact No. 4)

5. In 1993, and before, the diving and swimming activities of Dr. Ball were conducted under the University’s Camps and Conferences Program. (Stipulation of Fact No. 5)

6. In 1994, the classification of the activity was changed from a Camps and Conference Program to a university club under the auspices of the Student Activity Association which is an affiliated entity of the University. (Stipulation of Fact No. 6)

7. Affiliated entities are not charged for use of the University facilities. (Stipulation of Fact No. 7)

8. On March 5, 1997, the Student Senate, on behalf of the Student Activity Association, deactivated the swimming and diving club. (Stipulation of Fact No. 8)

9. Since the swimming and diving club was affiliated with the Student Activity Association, no formal contract was executed between the University and Dr. Ball from 1994-1996. (Stipulation of

Fact No. 9)

10. During the time that Dr. Ball operated his diving camps as a recognized club, requests for use of the facility was confirmed either by applications or memoranda between the parties. (Stipulation of Fact No. 10)

11. On January 22, 1997, Dr. Ball submitted an application for facilities use. (Stipulation of Fact No. 11)

12. On the application for non-instructional use of facility, there are spaces for performance time and setup time. (Stipulation of Fact, Exhibit C)

13. At the time of submission of the application, Dr. Ball was given the East Stroudsburg University Guidelines for Use of University Facilities, which includes directions regarding pool use. (Stipulation of Fact No. 12)

14. Dr. Ball's request for pool use during the 1997 summer months was confirmed in a May 6, 1997 memorandum from a University employee, Linda McCullouch. (Stipulation of Fact No. 13)

15. The memorandum detailed a \$20.00 per hour rate for use of the facility, for a minimum of two hours. (Stipulation of Fact, Exhibit E)

16. On July 4, 1997, Dr. Ball corresponded with Ms. McCullouch and canceled use of the pool between July 14 and July 19. (Stipulation of Fact, Exhibit F)

17. On July 11, 1997, the facilities Use Contract was executed by both parties. (Stipulation of Fact No. 15)

18. Under Section A of the facilities Use Contract, its states:

Date/s facilities use required, including pre- and post-event (if applicable i.e. set up, rehearsal, tear down):

DATE FROM: July 21, 1997 DATE TO: August 16, 1997  
M-SAT exc Wed.

Time 1st Week: From: 3 PM To 5 PM SAT 8-10 AM 7/26

Time 2nd Week: From: 1 PM to 3 PM no Sat

Time 3rd Week: From: 1 PM to 3 PM SAT 8-10 AM 8/16

(Stipulation of Fact, Exhibit G)

19. Dr. Ball's application for facilities use and the facilities Use Contract did not specify time for the setting up or tearing down of his diving equipment. (Stipulation of Fact, Exhibit G)

20. During the Summer of 1997, the University required Dr. Ball to setup and tear down his equipment during the time frame reflected in the facilities Use Contract. (Stipulation of Fact No. 22)

21. Prior to that time, while Dr. Ball was recognized as administering a University Club, he was permitted to setup and tear down his diving equipment outside of the practice time. (Stipulation of Fact No. 21)

### **CONCLUSIONS OF LAW**

1. The fundamental rule in construing a contract is that clear contractual terms capable of one reasonable interpretation must be given that effect.

2. Absent fraud, accident or mistake, parole or extrinsic evidence of a prior or contemporaneous oral agreement is not admissible to alter, vary, modify, or contradict terms of a contract, which has been reduced to an integrated written instrument.

3. The terms and conditions of the Facilities Use Contract are free of ambiguity.

### **OPINION**

On June 5, 1998, Claimant, Dr. R. Squier Ball, (hereinafter "Dr. Ball"), filed a Complaint against the Defendant, Commonwealth of Pennsylvania, State System of Higher Education, East Stroudsburg University of PA, for Five Hundred Four Dollars (\$504.00), plus interest, costs, and reasonable attorney fees. Dr. Ball alleged that East Stroudsburg University restricted his use of previously paid facility time by requiring him to setup and tear down his equipment during the two-hour rental period and that this procedure resulted in the loss of 1 hour per practice day. On July 16, 1998, the Defendant filed an Answer to Plaintiff's Complaint denying Dr. Ball's allegations. The matter was scheduled for a

Panel Hearing on September 8, 1999. The Panel Hearing was canceled at the request of the parties who further indicated that they had stipulated to the facts in this matter and requested the Board decide this case on briefs. On November 4, 1999, the Board concurred and ordered Plaintiff and Defendant to submit Proposed Findings of Fact and Conclusions of Law.

### **DISCUSSION**

Plaintiff, Dr. R. Squier Ball, (hereinafter “Dr. Ball”), is seeking Five Hundred Four Dollars (\$504.00) damages, plus costs, alleging that the University deprived him of the full use of the pool facility. A review of the Contract and Stipulation of Facts does not support Dr. Ball’s position.

The parties stipulated and agreed that at one time, Dr. Ball’s diving camps were affiliated with the University, but that affiliation had ceased by the Summer of 1997. (Stipulation of Fact Nos. 5, 6 and 8) Since Dr. Ball was no longer affiliated with the University, he was required to submit an application for non-instructional use of the facility with attached trade requests. A review of that document reveals that there are spaces the applicant is supposed to fill in, designating the amount of time it will take to set up equipment. Dr. Ball left these spaces blank on his application. (Stipulation of Fact, Exhibit C)

Further, the Contract entered into and executed by both parties on July 11, 1997, indicated the dates that the facility use was required as well as the time, including pre and post event. (Stipulation of Fact, Exhibit G) Dr. Ball’s Contract clearly indicated that he would be utilizing the pool for two-hour periods on various dates between July 21, 1997 and August 18, 1997. (Stipulation

of Fact, Exhibit G) Dr. Ball is arguing that a previous course of dealing between the parties merged into the formal Contract Agreement for the 1997 diving camps.<sup>1</sup>

A fundamental rule in construing a contract is that clear contractual terms that are capable of one reasonable interpretation must be given that effect. Amerikohl Mining, Inc. v. Mount Pleasant Township, \_\_\_ Pa. Cmwlth. \_\_\_, 727 A.2d 1179 (1999). As stated previously, a review of the Contract between the parties clearly shows that the facilities were rented for two-hour sessions. There was no fraud, accident and/or mistake, and therefore, parole or extrinsic evidence of a prior or contemporaneous oral agreement is not admissible to alter, vary, modify, or contradict the terms of the contract, which has been reduced to an integrated written instrument. Kehr Packages, Inc. v. Fidelity Bank National Association, \_\_\_ Pa. Super. \_\_\_, 710 A.2d 1169 (1998) Based on the above, the Contract is clear and unambiguous, and therefore, judgment is entered in favor of Defendant.

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<sup>1</sup>At no time before 1997 did the University Club or its Camps and Conferences Program charge Dr. Ball's Camp for the time used for preparing or removing the diving equipment. (Stipulation of Fact No. 21)

**ORDER**

**AND NOW**, this 2nd day of May, 2000, it is hereby **ORDERED** and **DECREED** that judgment is entered in favor of Defendant, Commonwealth of Pennsylvania, State System of Higher Education, East Stroudsburg University of PA.

Both parties are to bear their own costs.

BOARD OF CLAIMS

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David C. Clipper  
Chief Administrative Judge

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Louis G. O'Brien, P.E.  
Engineer Member

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James W. Harris  
Citizen Member