

Motion to Dismiss – Affirmed on Appeal

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Jonathan P. Killeen

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Attorney Jonathan P. Killeen obtained a favorable decision on behalf of his clients, a private game reserve and its president, dismissing a lawsuit brought by an aspiring member.

The plaintiff applied for membership in the game reserve and claimed that he had successfully fulfilled the game reserve’s by-law requirements and achieved the status of an “approved applicant,” allowing him to buy membership shares. During the membership approval process, the plaintiff’s application was pulled from consideration. The plaintiff sued the game reserve for breach of contract and injunctive relief in the form of being permitted to buy shares in the game reserve. The plaintiff also sued the president of the game reserve for fraudulent and negligent misrepresentation for his alleged statements concerning the plaintiff’s candidacy for membership.

Attorney Killeen successfully argued that the plaintiff had no standing to sue for breach of contract, or to seek injunctive relief, because he was not a direct party to, or third-party beneficiary of, the game reserve’s bylaws. As a result, the plaintiff could not seek to enforce the by-law provisions. Attorney Killeen also demonstrated that the plaintiff failed to allege sufficient facts to prove a claim for negligent or fraudulent misrepresentation against the game reserve’s president. Accordingly, the trial court dismissed the plaintiff’s complaint.

The plaintiff appealed the trial court’s decision concerning his request for injunctive relief to the New Hampshire Supreme Court. After extensive briefing, the Supreme Court ruled in favor of the game reserve and affirmed the trial court’s decision. A copy of the Supreme Court’s decision may be found using the following link:

<https://www.courts.nh.gov/sites/g/files/ehbemt471/files/documents/2024-08/20230681.pdf>