

## **Third Party Not Affected by Original Lease Agreement**

By **WILLIAM JABINE**

A Texan named Shofner leased a tract of ground and built a golf course on it. The written lease provided that Shofner could not assign or sublet without the lessor's written consent. Shofner assigned the lease to one Apperson, retaining a lien on the real and personal property to secure payment of the rent due under the original lease.

Apperson, who was familiar with the terms of the lease, occupied the land for more than eight months, operated the course and collected the revenue therefrom. He paid to the original lessor one month's rent which was received and accepted. When his check for the next month's rent bounced he paid a smaller amount and asked the lessor for more time to pay the balance. The lessor declined on the ground that he did not wish to take any action that might release Shofner from liability.

Shofner brought an action against Apperson to foreclose his lien on the property. Apperson countered with a claim that the assignment was void because Shofner had not obtained the lessor's written consent to sublet the ground to him. The trial court withdrew the case from the jury and rendered judgment for Shofner. Apperson appealed to the court of civil appeals of Texas in Waco.

### **Agrees With Trial Court**

The court of civil appeals affirmed the judgment of the trial court in favor of Shofner. In so doing it said in part: "The provision in the lease prohibiting assignment of the lease without written consent was for the lessor's benefit, and the lessor could waive it. In the absence of interference with his possession, Apperson 'has no right to complain'. (Citations)

"The undisputed evidence establishes that the lessor gave unequivocal oral consent to the assignment before it was executed, agreeing to execute a written consent if it was needed. The lessor, not a

party, testified oral approval and consent was given before the transfer to Apperson was made and there had never been objection to, or refusal of such consent. When Apperson announced he elected to rescind the contract under which the assignment was made because the consent was not in writing, the lessor executed a formal written consent recognizing the assignment, ratifying and confirming its prior oral agreement.

"Appellant says a provision in the lease agreement that it 'shall not be amended, changed or extended except by written instrument signed by lessor and lessee precluded oral consent to the assignment, waiver or ratification. Justice Stayton said in *Morrison v. Ins. Co. of North America*, 69 Tex. 353, 6 S.W. 605, 609: 'The answer is manifest. A written bargain is of no higher degree than a parol (oral) one. Either may vary or discharge the other; and there can be no more force in an agreement in writing not to agree by parol than in a parol agreement not to agree in writing.'" (*Apperson v. Shofner*, 351 S.W. 367.)

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## **First Flight Again Co-Sponsors PGA Club Championship**

First Flight Co. of Chattanooga, Tenn. will be a co-sponsor of the 1963 PGA National golf club championship which will be played at Port St. Lucie (Fla.) CC, Jan. 17-20. A total of \$25,000, a record purse, will be divided among the top finishers in seven age groups.

This is the fifth year that First Flight is co-sponsoring the 72-hole club championship. The tournament will be played over the two courses at St. Lucie. The "Sinners" 18 measures over 7,000 yards and the "Saints" course is 6,547 yards.

Defending champion is Jim Stamps. He won the 1962 event, played at the PGA National club in Dunedin, with a 274. Nearly 350 pros took part in last year's event.

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## **Mills Top Rookie**

Ladies PGA "rookie of the year" award for 1962 went to Mary Mills, who joined the tour in April, played in 20 tournaments and won more than \$8,000. She placed second in two of the women's events. Mary is a protege of Johnny Revolta and won the Mississippi Amateur every year from 1954 through 1961.