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## Court decisions may affect cottage colony summer plans



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For more than half a century, people have enjoyed their summers vacationing at the Curtis Pine Grove cottage community located on Old Wharf Rd. in Dennisport. These vacationers may soon have to change their summer plans as a result of a Barnstable Superior Court decision issued on May 26th, 2009 in which the court found that a long-term lease the cottage owners sought to extend terminated on February 27th, 2004.

The Curtis Pine Grove cottage community is comprised of nearly seven acres of land located across the street from Nantucket Sound and included 60 parcels subleased to cottage owners. The cottage colony was originally leased by Arthur Chase to Fred and Mary Curtis in 1946. A new lease was entered by Arthur and Ethel Chase and the Curtises in 1954 for 25 years and included the option to renew for 25 years at the annual rent of \$400. The Curtises later assigned their tenancy to Curtis Pine Grove, Inc., a company operated by the Curtises' son, Bob. In 1978, as the 1954 lease was expiring, the Curtis company exercised its right to renew the lease for 25 years through February, 2004. In January, 2004, the Curtis Company attempted to renew again for an additional 25 years to February, 2029. When the owner of the property rejected that attempt to renew, lawsuits were filed against the property owner by the tenant and its subtenant cottage owners, seeking to confirm their right to extend for an indefinite number of 25 year periods - all at the same \$400 per year rent. In its counterclaim, Old Wharf Realty LLC, the present property owner, requested the court to follow case law which provides that a renewal allows only a one-time, not perpetual, right to renew. In its counterclaim, Old Wharf Realty also sought possession of the property and fair market rent from February 28th, 2004.

The two lawsuits were consolidated and after extensive discovery and several hearings the court ultimately agreed with Old Wharf Realty holding that the 1954 lease did not create a perpetual lease, that the 25 year renewal option could only be exercised once, and that the lease therefore expired on February 27th, 2004. In reaching its decision, the court noted that

"there is no evidence beyond the documents at hand...to guide this court's resolution of the controversy" and "our law is reluctant to recognize a lease in perpetuity absent the most direct language to that effect within the lease." The court went on to say that "[t]he 1954 Lease does not contain language creating a lease in perpetuity. Direct, plain words such as "perpetual," "in perpetuity" and "forever" are absent." The fact that there was no rent escalation clause and that the Curtis company reportedly collected over \$100,000 per year in rent from its subtenants but sought to pay only \$400 per year in annual rent to the property owner appeared to persuade the judge that the original parties to the 1954 lease could not possibly have intended for the lease of such prime Cape property to be extended indefinitely.

At the time Old Wharf Realty bought the property, it had cleared several long-standing title issues, and then made several attempts to settle the lawsuits with the cottage owners. Old Wharf Realty's settlement efforts were rejected and now the cottage owners will face an uncertain future and a large bill for use and occupancy charges - the equivalent of rent on account of their cottages being located on the property from February, 2004. After entry of the court's decision, Old Wharf Realty obtained an attachment against all of the cottages to secure its claims and an injunction to assure proper maintenance of the property and the cottages. At the present time, and to avoid further litigation costs, approximately 51 of the 59 cottage owners have agreed to the amount of back rent due and acknowledged Old Wharf Realty's right to possession.

Old Wharf Realty is obviously pleased with the court's decision as being both an appropriate and fair result based on the circumstances and applicable law.

As to Old Wharf Realty's future plans, Old Wharf Realty has resolved all but a handful of the remaining damage claims and intends to proceed to trial on the rest. A spokesperson for Old Wharf Realty confirmed that his company was "continuing to plan for the development of the 7 acre Curtis Pine Grove property and that development may include continuation of cottage use."

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