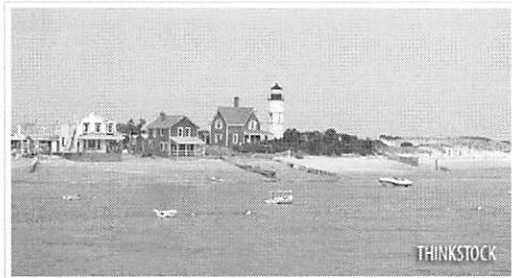




Boston YWCA loses appeal in fight over Cape Cod cottages

By: Pat Murphy January 19, 2017



A dispute over prime Cape Cod real estate can set blood relatives against each other in bitter legal feuds.

So maybe it's not all that surprising that charitable nonprofits that were once sister chapters of the Young Women's Christian Association would lawyer up to battle over ownership of three historic waterfront cottages in Chatham reportedly worth more than \$6 million.

The Water Street property was owned by Avis A.M. Chase, a Philadelphian who died in 1953. Chase's will provided for certain named annuitants. Upon the death of the last annuitant, the will called for the transfer of her entire residuary estate "absolutely and in fee simple" for certain "uses, purposes and trusts" to the defendant in the case, the YWCA of Philadelphia.

The will defined the "uses, purposes and trusts" of the Water Street cottages to be for the maintenance, use and operation of the properties "as a place which is available for the benefit, rest and recreation of white Protestant women from Philadelphia, Pennsylvania, and its vicinity, who are members of the Young Women's Christian Association of Philadelphia, Pennsylvania."

In the event the defendant "for any reason" was unable to accept the gift, the will designated the plaintiff Boston YWCA as a successor beneficiary.

In 1994, after the death of the last annuitant, the defendant took title to the Water Street properties through a testamentary trust created under the terms of the will and approved by the Philadelphia Orphan's Court.

In 2010, the national YWCA disaffiliated the defendant as a local YWCA, allegedly because the defendant failed to provide charitable programming for its members and the local community in accordance with the YWCA's mission. At that time the defendant began doing business under the name of the Avis Chase Women's Association of Philadelphia.

Seizing on the opportunity, the plaintiff filed a complaint in equity in 2012 in the Barnstable Probate & Family Court, claiming a right to ownership of the Water Street cottages under the terms of Chase's will. The plaintiff argued that the defendant had failed to satisfy the conditions of the bequest by failing to remain affiliated with the YWCA as well as by failing to provide the cottages for the rest and recreation of the defendant's members.

In January 2015, after a bench trial on the issue of whether the defendant used the cottages for the "benefit, rest and recreation" of its members, Probate Court Judge Robert A. Scandurra entered judgment for the plaintiff.

However, last month the Appeals Court reversed. In an unpublished decision, Judges Judd J. Carhart, Elspeth B. Cypher and Andrew R. Grainger found that the defendant took title to the cottages "absolutely and in fee simple" under the terms of both the bequest and the decree of the Philadelphia Orphan's Court.

"In sum, the property is held in fee simple," the judges wrote. "There is no formal trust in existence and the plaintiff has no standing to claim a status as the proposed beneficiary of an implied or resulting trust."

The plaintiff is represented by Ralph T. Lepore III of Holland & Knight in Boston. Lepore did not respond to a request for comment.

Counsel for the defendant, Eric R. LeBlanc of Bennett & Belfort in Cambridge, and Albert L. Piccerilli of Montgomery McCracken in Philadelphia, declined to comment, citing the fact that the plaintiff filed a petition for further appellate review.

Andover attorney Timothy D. Sullivan chairs the Massachusetts Bar Association's Probate Law Section.

Sullivan can't say whether the Appeals Court got it right or wrong, noting that the case is complicated by the fact that, in 1999, the Probate Court issued an order that effectively confirmed the distribution of the cottages to the defendant. While that order declared the transfer to be "outright in fee simple," it also included contradictory language suggesting that the deed was subject to the restriction in Chase's will that the property be held for certain uses and purposes.

Sullivan says he would need to know more about the 1999 order before he could venture a guess as to its effect on the parties' current dispute.

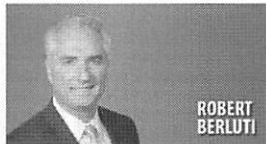
"The transfer which originally occurred [in 1994] was a fee simple transfer, and that in some ways cuts off any remainder [interest]," Sullivan says. "But yet there was something that happened in 1999 that may have reversed that fee simple transfer to the extent that it made the purposes and uses a restriction in the deed."

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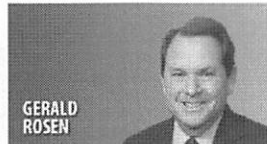
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