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Appeals Court comes to decision on CWECA case - by Susan Bernstein

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On July 10, 2018, the Massachusetts Appeals Court issued its decision in the case of Commercial Wharf East Condominium Associates vs. Boston Boat Basin, LLC et al., (hereinafter referred to as CWECA) involving MGL c. 91 Waterways issues.

The disagreements in CWECA began in 2006 when CWECA, an association of condominiums located on the landward end of Boston's Commercial Wharf, brought an action against Boston Boat, which operates an inn and marina adjacent to CWECA on the seaward end of the wharf, pursuant to a c. 91 Waterways License. Boston Boat's only access to its property is via an easement over CWECA's property.

The original case was brought in the Land Court to enforce the terms of certain property use restrictions that benefited CWECA, but which Boston Boat claimed violated the c. 91's "public trust doctrine." In 2009, CWECA obtained a partial summary judgment ruling that rejected Boston Boat's claims and a preliminary injunction was then issued against Boston Boat. In 2011, CWECA filed a contempt complaint asserting that Boston Boat was using the easement in violation of the preliminary injunction. In 2016, a decision was issued rejecting Boston Boat's claims and a finding that it was in contempt of the injunction issued in 2006. The restrictions that Boston Boat objected to included: limitations on deliveries and parking, prohibition of uses on vessels such as party boats, and other uses such as a function hall in the absence of compliance with certain conditions.

Both the Land Court and the Appeals Court decisions rejected Boston Boat's claims that the restrictions violated the public trust doctrine, but for different reasons. The Appeals Court decision is based on the finding that only DEP, as authorized by the Massachusetts Legislature, has the authority to act on behalf of the public's trust rights. We have seen several decisions in this regard, especially the Moot and Arno cases. In fact, the Appeals Court decision stated that, "[g]iven the Supreme Judicial Court's consistent and strict enforcement of the express delegation requirement, we reject the argument that the proper extent of public trust rights in a particular locus may be determined in private litigation..." Further the Appeals Court stated, "Boston Boat had no authority in the first place to seek judicial enforcement of public trust rights." DEP's goal, as described in the decision, is to allow certain public access rights on land situated in tidelands and for those private rights the licensee is required to make certain compensation in public access by reflecting "a balance....to determine ...a proper public purpose" and ensuring that such purpose "shall provide a greater public benefit than detriment to the rights of the public in said lands."

The take away: Go to DEP first to appeal conditions in a c. 91 Waterways License.

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