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Land Trust Entitled to Tax Exemption

"It is time to directly declare that a legitimate land trust, such as this one, which meets the statutory and case law requirements, is a benevolent and charitable institution exempt from local property taxes," Superior Court Justice Paul Fritzsche wrote. The trust in question is the Francis Small Heritage Trust and the locality is the Town of Limington.

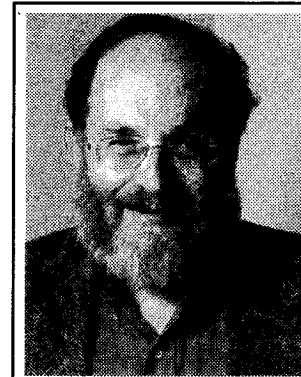
The Trust appealed a decision of the Town of Limington denying its application for property tax exemption.

Lawyers for the parties — David Lourie for the Trust and Leah Rachin for the Town, disagreed on the status of an earlier Superior Court decision, and on its impact, when coupled with this decision, on municipalities and their taxation abilities.

Both attorneys noted that *Cushing Nature Preservation Center v. Town of Cushing* stood for the proposition that a land trust that received a tax reduction under Open Spaces regulations was not also eligible for a total tax exemption as a benevolent and charitable organization. Lourie said that case had been vacated; Rachin disagreed.

According to Justice Fritzsche, on appeal in *Cushing*, the "Law Court did not determine that the Farm and Open Space abatement provisions ... precluded full tax exemption for a charitable institution engaged in land conservation." In that decision, the Law Court found, "[W]e need not determine whether land conservation or preservation, standing alone, could constitute a charitable use." The case was vacated and remanded.

Rachin said that municipalities have been relying on the reasoning in *Cushing* to deny tax exemption to land trusts. "I see this decision as causing confusion," Rachin said. "There's no Law Court decision, and two completely different Superior Court decisions. It's difficult to know how to advise municipal clients." Rachin practices with Bergen & Parkinson in Kennebunk.



David Lourie

Lourie described the relationship between the Town and the Small Heritage Trust as combative. "The Board in Limington is highly prejudiced against my client," Lourie said. "There's also animosity on the part of neighbors to the Trust. The Selectmen are pro-development, and the Trust is in the business of not encouraging development." Lourie practices in Cape Elizabeth.

According to the Trust's website, www.fsht.org, the land at issue here is known as Sawyer Mountain Highlands. It includes 17 parcels in Limington and Limerick, and "is the largest unfragmented block of undeveloped forested areas in York and Cumberland counties."

In his discussion of statutory history and case law, Justice Fritzsche noted that a tax exemption for property used for charitable and benevolent purposes is "an ancient exemption." The State of Maine has had provisions providing such exemptions at least back to 1819.

Over the years, "dozens of cases" have been heard by the Law Court.

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The Board in this case found that the Trust was not restricted solely to "benevolent and charitable purposes." This was based on wording in the Articles of Incorporation that one purpose of the Trust is to "protect appropriate uses such as logging, farming, and other compatible commercial activities within specified areas and adjacent areas." Three of the 11 lots in Limington are Tree Growth lots, while the remainder are Open Space lots.

The Board, relying on *Cushing*, also found that the eight Open Space lots already "enjoy reduced assessments" and were therefore not qualified for a total exemption.

Justice Fritzsche, on appeal, found that the "Trust meets all of the tests" of a "purely benevolent and charitable" organization. The article allowing the protection of logging and farming does not allow the Trust to actually engage in such profit-making activities.

The Justice then noted that the Trust "provides what a park does and even more." If the State were to acquire this land for a park, it would be exempt from taxes.

Finally, according to Justice Fritzsche, the "direct and indirect value of open space preservation particularly when, in appropriate cases, it is coupled with access for a wide variety of recreational activity is within any modern definition of a charitable institution. ...

"Whether one refers to the works and writings of President Theodore Roosevelt, Aldo Leopold or John Muir or more current scientists or authors there is an unmistakable value, despite the loss of tax revenues, to the preservation of open space particularly in a state with limited public lands."

Independent of this Rule 80C claim, the Trust has brought a § 1983 civil rights claim against the Town. That, and counts dealing with 2011 and 2012 taxes, will be decided later if necessary. Lourie said he hoped this decision resolved the issue, so there would be no need to pursue the civil rights claim.

Rachin said the Town was disappointed in the decision, but had not yet decided whether to appeal.

According to the Trust's website, "In 1668, Francis Small traded goods with the Newichewannock tribe of this area. Their Chief Wesumbe, also known as Captain Sandy, was friendly with Small and warned him of a plot against his life. A group of renegade tribesmen planned on murdering Small instead of paying him with the furs that were owed to him. Small escaped after watching his house in what is now Cornish burn to the ground. The Chief made up the loss by selling Small all the lands bounded by the Great and Little Ossipee Rivers, the Saco River, and the New Hampshire border. Known now as the five Ossipee towns, the tract included all of Limington, Limerick, Cornish (formerly named Francisborough), Newfield, and Parsonsfield. These are the five towns that the Francis Small Heritage Trust concentrates its efforts in."

The decision in *Francis Small Heritage Trust, Inc. v. Town of Limington et al*, MLR/SC#223-13, is summarized in this issue on page 7.

—Jo Lynn Southard, jos@mainelawyersreview.com

RECENT MAINE DECISIONS

TAXATION

Exemption Status

Open Spaces Valuation

Benevolent and Charitable Purposes

Where Trust owns land for conservation and preservation, the land is open to the public for no fee, and it meets all statutory and case law requirements, it is a benevolent and charitable organization entitled to exemption from local property taxes.

Plaintiff Francis Small Heritage Trust appealed from a decision of the Maine Board of Property Tax Review denying the Trust's appeal from a decision of the Town of Limington denying its application for tax exempt status for 11 lots it owns in Limington. The Maine Coast Heritage Trust filed an *amicus* brief in the proceeding.

The court outlined the "broad context" of tax laws and exemptions, and various "tax breaks" that may be offered to businesses. "Tax burdens or the exemption from taxes are widely seen as a tool to effectuate public policy."

The Trust sought exemption for its property as "real estate and personal property owned and occupied or used solely for their own purposes by benevolent and charitable institutions incorporated by this State. ..."

"Over the last 140 years the Law Court has developed a substantial body of law which will be applied to the facts of the current dispute." With one exception in 1876, the "Law Court has consistently stated that 'benevolent' and 'charitable' are synonymous."

The court then outlined the evolutions of the definitions of "charitable" and "benevolent" since 1601, and the more recent developments dealing with land conservation and preservation.

In this case, the Trust owns 11 contiguous parcels in the Town; three are tree growth properties while eight are open space properties. The Trust's purposes are "to conserve natural resources and to provide free public access to those resources. ... [T]he properties are used and operated as conserved wildlife habitat," which is open to the public year-round. It is used by local schools and the Trust has sponsored a Boy Scout troop. In addition to field trips and environmental education, the land is used for

hunting, fishing, hiking, cross-country skiing, and snowmobiling.

According to the Trust's Articles of Incorporation, another purpose of the Trust is to "protect appropriate uses such as logging, farming and other compatible commercial activities within specified areas and adjacent areas."

The Board rejected the Trust's application for exemption based largely on this support for "commercial activities." A separate farm owned by the Trust in Parsonsfield engages in commercial farming. In addition, based on a single Superior Court decision, the Board determined that because the open space lots already have reduced assessments, they do not qualify for further exemption.

The court considered a Rule 80C appeal, and an appeal of the open spaces valuations; further counts will be decided later if necessary.

"The Trust meets all of the tests set forth in the *Green Acre Baha'i Institute [v. Town of Eliot]* case. It is operated for purely benevolent and charitable purposes in good faith. There is no profit motive revealed or concealed. There is no pretense to avoid taxes. The production of any revenue is purely incidental to the dominant purpose which is benevolent and charitable."

Although the Articles of Incorporation permit the "protection" of logging, farming, and similar commercial activities, the Articles do not authorize such activities, and the Trust does not engage in such activities on this property. All the requirements of 36 M.R.S. § 652(1)(C) have been met, and there "is no indication that anything the Trust does violates public policy. ..."

"It is time to directly declare that a legitimate land trust, such as this one, which meets the statutory and case law requirements, is a benevolent and charitable institution exempt from local property taxes. ... An institution such as the Trust meets the definition of a charitable institution and should have been granted an exemption." Some such trusts, if not incorporated by the State, or if private ownership rights were retained, would not qualify as charitable and benevolent.

The Trust is entitled to a full exemption.

Appeal granted.

Francis Small Heritage Trust, Inc. v. Town of Limington et al. (Fritzsche, J.)

York Dkt. No. AP-12-41, 5-30-13

David Lourie for plaintiff.

Leah B. Rachin for Town.

MLR/SC#223-13 — 13 pages

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CIVIL PRACTICE

Preliminary Injunction

CORRECTIONS

Medical Care for Prisoner

Where petitioner failed to establish irreparable harm if injunction not granted, but balance of harms supports petitioner's healthcare desires, but petitioner has not shown likelihood of success on merits of complaint, motion for preliminary injunction was denied.

Petitioner sought injunctive relief ordering the Maine Correctional Center to transport him to an offsite medical facility, and to transport him to "competent eye care professionals" and follow their recommendations. He also filed a motion for a preliminary injunction seeking similar relief.

Petitioner failed to establish irreparable injury if he is not taken to an offsite doctor. He provided his sworn affidavit outlining his various symptoms, but did not establish what, if anything, an outside doctor might do differently than the medical care he is receiving at the prison. The State submitted two expert affidavits that petitioner's medical issues are not so serious as to require offsite care.

On the balance of harms issue, the State notes the expense of transporting a prisoner to an outside doctor, if petitioner's health needs required it; however, his health would take precedence over the financial burden to the state.

Petitioner did not demonstrate "a probability" or "substantial possibility" of success on the merits. Finally, the State demonstrated the financial and public safety burden of transporting a prisoner. Petitioner was not entitled to a preliminary injunction. "Although [petitioner] is not [so] entitled ..., there remains the issue whether he may be entitled to some form of relief if he prevails on his 'petition.'" He is represented by counsel, and counsel should confer with the State to determine if a Rule 35(a) order should be issued.

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