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File #5617

May 7, 2010

Massachusetts Land Court
226 Causeway Street
Boston, MA 02114

Re: Maria A. Kitras, Trustee, et al.
Vs. Town of Aquinnah, et al.
No. 238738

Dear Sir or Madam:

I enclose for filing the Plaintiffs' Reply Brief to Defendants' Memorandum of Law and a Certificate of Service.

Very truly yours,

Nicholas J. Decoulos

NJD:aw
Enclosures
cc: Service List w/enc.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

DUKES, ss. MISC. CASE NO. 238738

MARIA A. KITRAS, TRUSTEE, et als.	*
Plaintiffs	*
	*
v.	*
	*
TOWN OF AQUINNAH, et als.,	*
Defendants	*

PLAINTIFFS' REPLY BRIEF
TO DEFENDANTS' MEMORANDUM OF LAW ON THE ISSUE OF INTENT

The Plaintiffs, Maria A. Kitras, as Trustee of Bear Realty Trust, Maria A. Kitras and James J. Decoulos, as Trustees of Bear II Realty Trust, and Maria A. Kitras and James J. Decoulos, as Trustees of Gorda Realty Trust, submit to the Court the following Reply Brief to the Memorandum of Law filed by Defendants' Town of Aquinnah, Vineyard Conservation Society, Inc, Martha's Vineyard Land Bank, Caroline B. Kennedy and Edwin Schlossberg, Jack and Joann Fruchtman, and David and Betsy Wice (the "Defendants") on April 21, 2010. The Reply Brief also addresses the Memorandum filed by Defendant Commonwealth of Massachusetts on April 21, 2010.

The Court's attention is also called to an error made by the Plaintiffs on page 8 of their Brief, wherein it states that only five lots had access to the existing State Road, when, in

fact, there were many lots shown on the set-off plan which had frontage on State Road. (Ex. 22, Pg. 195).

The Defendants mistakenly state on page 15 of their Memorandum, that "the remainder of the common land was divided into lots numbered 189 and upwards." At Book 65, Page 152, the Commissioners commenced the conveyancing of the common land with Lot No. 174.

ISSUES RAISED BY DEFENDANTS

In their Memorandum, Defendants have raised five issues to rebut the presumption in law that Plaintiffs are entitled to an easement by necessity.

First, they argue that *profits à prendre* ("profits") to excavate peat and fish from the common land stand on equal footing with the implied easements of access and that those profits are evidence that the Commissioners did not intend to provide for access to the set-off lots.

Second, that the condition of the common land was desolate and barren, and that these alleged haggard conditions at the time of the 1878 division of common land demonstrate that the Commissioners had no intent to provide access to the individual set-off lots.

Third, that the history of aboriginal title was unsettled and that the common lands were not held in unified title or granted to individuals in fee simple absolute.

Fourth, that the length of time that Plaintiffs waited to bring their claim for easements by necessity was too long and that the implied easements have been abandoned.

Fifth, they refer to the conveyance of lots by the Chappaquiddick tribe and attempt to correlate the activities on Chappaquiddick with those on Gay Head. (Pages 5-7, 30-31 of Defendants' Memorandum).

EXPRESS PROFITS À PRENDRE AND IMPLIED EASEMENTS BY NECESSITY

At page 15 of Defendants' Memorandum, 36 set-off lots from 1878 are identified that had expressly reserved "…rights in and to the peat upon said premises."

The facts reveal that the only "easements" which Defendants can identify to rebut the presumption offered by the Plaintiffs are nothing more than express *profits à prendre* which have the same need for implied easements by necessity as every other lot that was set-off in 1878. There is no express language anywhere in the deeds which describes how the peat can be removed over the other lots.

The present owners of the *profit à prendre* easements must also be the holders of a dominant estate in order to remove the peat.

See the case of Gray v. Handy, 349 Mass. 438, 441 (1965).

> A profit [à prendre] is appurtenant when created for the benefit of a dominant estate. It is then in all respects, except the character of the user, of the same nature as

> an easement, passing with the dominant estate as an incident thereof whenever the estate passes by deed, devise or inheritance, so that the person entitled to the enjoyment of the profit at any time will be the person who is at that time the immediate owner of the dominant estate.' Walsh, Commentaries on the Law of Real Property, § 229. Phillips v. Rhodes, 7 Metc. 322, 323-324. Goodrich v. Burbank, 12 Allen, 459, 461. Tiffany, Real Property (3d ed.) §§ 839, 840. Restatement: Property, § 450, special note, comments f and g. Jones, Easements, § 49. See Foster v. Lee, 271 Mass. 200, 204-205. . . .
>
> A conveyance of a profit à prendre is to be distinguished from a conveyance of an interest in real estate which will give complete ownership of a valuable part of the property, while at the same time [the owner] may retain his general ownership of the whole tract for other purposes which do not interfere with the rights which he conveys. Minerals, mines, quarries and other similar portions of the estate may be conveyed, even in fee, while the rest is retained.

For the Court's convenience, the Plaintiffs have prepared a list of the lots with reservations attached as Appendix A. As a result of receiving those reservations, the holders thereof now have an easement by necessity to traverse over the lots to obtain access to the lots subject to the reservation. Once again, the Commissioners failed to identify where the easements by necessity are located to allow the holders to remove the peat.

THE PHYSICAL CONDITION OF THE COMMON LANDS IN 1878

Defendants point to the Appeals Court suggestion that the joint special committee "expected that these lots would 'lie untilled and comparatively unused' following division. Report

of the Committee, 1869 Senate Doc. No. 14 at 5." Kitras v. Town of Aquinnah, 64 Mass. App. Ct. 285, 299 (2005).

What is missing from this passage is the context in which the Committee made the statement.

> In addition to what is held in severalty, there is the large tract of some nineteen hundred acres held in common. This land is uneven, rough, and not remarkably fertile. A good deal of it, however, is, or might be made, reasonably productive with a slight expenditure, and, doubtless, would be if the owners had the means; but, deficient as they are in the "worldly gear," it is, perhaps, better that these lands should continue to lie in common for the benefit of the whole community as pasturage and berry lands, than to be divided up into small lots to lie untilled and comparatively unused. This, however, is a question of "property", which every "citizen" should have the privilege of determining for himself, and the people of Gay Head have certainly the right to claim, as among the first proofs of their recognition to full citizenship, the disposition of their landed property, in accordance with their own wishes.
>
> *Report of the Committee of the Legislature of 1869, on the Condition of the Gay Head Indians*, January, 1870; Page 5. (Ex. 10, Pg. 72).

The Appeals Court did not have the benefit of the 1871 Report of Richard L. Pease, one year after the Committee's Report, which detailed a thorough and different description of the Gay Head land and its people, contrary to the 1869 Report of the Committee.

> The territory embraces about every variety of soil, a portion of the land is of the very best quality, and capable, under good culture, of producing most abundant harvests. The surface is very irregular, abounding in hills and valleys, ponds, swamps, fine

pasture-land and barren beach, with occasional patches of trees and tilled land.

Increasing attention is paid to agriculture, but there is room for great improvement. As an abundance of that most excellent dressing, rockwood, can be procured, additional labor, energy and skill would bring a sure reward. A very large portion of the lands now inclosed, was, a generation since, wild, rough land, unfenced, and seldom tilled, and of course unproductive and of little value. As it has been cleared up, fenced and tilled, its value largely increased. Some of the inhabitants keep a fair amount of stock, and cut hay enough to feed it. Their barns will compare favorably with those of many other sections of the State; and instead of the rude wigwam, formerly the only shelter and home of the Indians, there now is found the neat, commodious and comfortable wooden or stone house. While yet, as a community, poor and without any men of wealth, their circumstances are improving. The table marked A. in the Appendix, will show the amount of stock kept, the quantity of grain, roots and hay gathered.

The response of the citizens, by the filing of the Petition for Partition, was evidence of their determination relating to the disposition of their land and property in accordance with their own wishes. The Petition contained the following language: ". . . to divide and set off our parts in severalty to us of all of the common land in Gay Head. In accordance with the Act to incorporate the Town of Gay Head. Chap. 213, Sect 6, A.D. 1870." (Ex. 12, Pg. 89).

HISTORY OF ABORIGINAL TITLE

The Defendants next claim that the common lands continued to have aboriginal Indian title, which did not dissolve until Congress addressed the matter in the Massachusetts Indian Land

Claims Settlement, 25 U.S.C. § 1771. They further confuse the title issue by alleging that the common lands were "occupied" and had "two distinct levels of ownership in Indian lands: fee title and Indian title." James v. Watt, 716 F.2d 71, 74 (1st Cir. 1983).

The Defendants mistakenly stated on Page 29 of their Memorandum: ". . . when the Commonwealth deeded the common lands to individuals in 1878, it deeded its fee title in those lands." The Commonwealth did not convey the land in 1878. The land was conveyed to the Town in fee simple by the enactment of Chapter 213 of the Acts of 1870 (Ex. 11, § 2, Pg. 85). The partition then took place pursuant to § 6 of the Act and the common lands were deeded to the grantees in fee simple.

It is clear from the record that the common lands were conveyed to the newly incorporated Town of Gay Head from the Commonwealth of Massachusetts (the sovereign state) under Chapter 213, Section 2 of the Acts of 1870 (Ex. 11). There were no enclosures on these lands, no possessory rights - and no individual Indian titles to ratify. The conveyance of the common lands to the Town in 1870 was in fee simple absolute. "Until 1870, title to the Gay Head Indians' land was held on behalf of the tribe as a whole." Cornwall v. Forger, 27 Mass. App. Ct. 336, 341 (1989).

Congress clarified all questions of aboriginal title when it enacted the Massachusetts Indian Land Claims Settlement. (Appendix B).

(b) Extinguishment of aboriginal title

If there was any aboriginal title held by the Wampanoag Tribal Council of Gay Head, Inc., it was extinguished retroactively by the enactment of 25 U.S.C. § 1771b, Subsections (a) through (d), which was enacted on August 18, 1987. A copy of section 1771b is attached as Appendix B. Section 1771b involves subsection (a) Approval of Prior Transfers; (b) Extinguishment of aboriginal title; (c) Extinguishment of claims arising from prior transfers or extinguishment of aboriginal title; and (d) Personal claims not affected. Appendix B speaks for itself.

CONTINUING NECESSITY OF EASEMENT

The fourth issue that Defendants raise to rebut the presumption in favor of the Plaintiffs is the length of time that has passed since 1878. They allege that the Plaintiffs should not be entitled to an easement by necessity due to the delay in bringing the claim to the courts.

The Plaintiffs are entitled to an easement by necessity. See the case Schmidt v. Quinn, 136 Mass. 575, 576-577 (1884). "A right of way by necessity can only be presumed when the necessity existed at the time of the grant; and it continues

only so long as the necessity continues, and it is only a right to a convenient way."

See, also, Hart v. Deering, 222 Mass. 407, 411 (1915).

> It is not enough to extinguish a right of way by necessity to show merely that since it came into existence the dominant estate abuts upon a public way, as in this case. To operate as an extinguishment of the way it must appear that the outlet by means of the public street is reasonably sufficient to the beneficial enjoyment of the dominant estate. We are satisfied that the means of access to and from the petitioner's land only by way of Ionia street is inadequate for the reasonable and beneficial enjoyment of the petitioner's land upon the facts as found by the land court.

Restatement of Property (Third) § 2.15(e) (2000).

> Because of the strong public policy favoring avoidance of the costs incurred on account of unusable property, and the strong likelihood that the parties to the conveyance do not intend to deprive it of its utility, servitudes by necessity will be implied unless it is clear that the parties intend to deprive the property of rights necessary to its enjoyment. Thus, servitudes for rights necessary to enjoyment of the property will be implied unless it affirmatively appears from the language or circumstances of the conveyance that the parties did intend that result. Mere proof that they failed to consider access rights, or incorrectly believed other means to be available, is not sufficient to justify exclusion of implied servitudes for rights necessary to its enjoyment.

See, also, Illustration 14. of § 2.15(e), Id.

> Railroad Corporation owned a large parcel of land that had no access to a public highway. The parcel abutted Railroad Corporation's railroad right of way, which it owned in fee simple. Railroad Corporation conveyed the parcel to A by a conveyance which stated: This conveyance does not include any rights of ingress or egress over other property of grantor, including grantor's adjacent right of way. There is no implied

> servitude for access over the grantor's retained land to the conveyed parcel because the intent not to create a servitude for access is clearly stated.

There is not one iota of evidence, documentary or otherwise, that there was any intent to not create a servitude for access.

The only set-off lots that cannot claim to be entitled to an easement by necessity are those lots set forth in the following categories.

(1) The lots that had access to then (only existing) way shown on the set-off plan in 1878 for the benefit of the public, which is now known as State Road.

(2) The lots that obtained access to the ways created after 1878 by grant.

(3) The lots that were fortuitously located in the path of the Moshup Trail.

The Defendant owners of those lots having access to the Moshup Trail have raised the barriers of access by their claims and defenses in this case.

COMPARISON OF CHAPPAQUIDDICK LEGISLATION WITH GAY HEAD LEGISLATION

On pages 5-7 of the Defendants' Memorandum, the Defendants attempt to compare the enactments pertaining to the Chappaquiddick land with the enactments pertaining to the Gay Head land. Obviously, the Chappaquiddick division of the common lands was made by a visionary tribe that was, as stated on Page 6 of the Defendants' Memorandum, "far in advance of any other

tribe in the state. . . . These favorable changes, they attribute partly to the division of their lands under the act of 1828." Ex. 71, Bird Report at 7.

Without any doubt, the Gay Head tribe and the Commissioners who conveyed the common land to the members of Gay Head were not as visionary, as evidenced by their oversight to give the grantees an easement for access to their respective lots.

CONCLUSION

As stated in Queler v. Skowron, 438 Mass. 304, 311 (2002):

> It is well established that [d]eeds should be construed as to give effect to the intent of the parties, unless inconsistent with some law or repugnant to the terms of the grant. The intent of the parties is gleaned from the words used, interpreted in the light of the material circumstances and pertinent facts known to them at the time [the deed] was executed. [Citations omitted].

Pursuant to the order of bifurcation dated August 14, 2006, it is respectfully submitted that the Court make the following findings and then proceed with the second portion of the proceedings to determine the location of the easements for access by the Plaintiffs to the road network presently located on Gay Head.

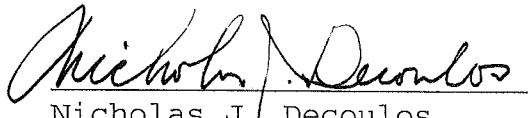
1. The requisite of intent was present in 1878 to claim one or more easements by necessity for the Plaintiffs' lots.

2. The question of intent has been proven by the Plaintiffs and that there exists an implied easement by necessity.

Respectfully submitted:

Maria A. Kitras as she is the Trustee of Bear Realty Trust, Bear II Realty Trust and Gorda Realty Trust; James J. Decoulos as he is the Trustee of Bear II Realty Trust and Gorda Realty Trust

By their Attorney:



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May 7, 2010

Lots with Reservation

Exhibit 84

Lot 93, Page 161	Reserving, however, any right or rights to peat on the premises that may justly belong to any person or persons, to them, their heirs and assigns.
Lot 218, Page 175	Reserving, however, to William Jeffers, his heirs and assigns, all his rights in and to the peat upon said premises.
Lot 240, Page 184	Reserving, however, to William A. Vanderhoop, and any others heretofore rightly claiming any peat upon said premises, to them, their heirs and assigns, all their peat rights.
Lot 241, Page 184	Reserving, however, to Horatio N. Pease, as the assign of Emily G. Johnson, all the rights she formerly possessed in and to the peat on said premises, to him, his heirs and assigns.
Lot 244, Page 185	Reserving, however, to Deacon Simon Johnson, Patrick Divine, and John Divine, their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 245, Page 186	Reserving, however, to Deacon Simon Johnson, Patrick Divine, and John Divine, their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 246, Page 186	Reserving, however, to Deacon Simon Johnson, Patrick Divine, and John Divine, their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 254, Page 190	Reserving, however, to Abram Rodman, his and assigns, all his rights in and to the peat upon said premises.
Lot 277, Page 199	Reserving, however, to Jonathan Francis, his and assigns, all his rights in and to the peat upon said premises.
Lot 293, Page 206	Reserving, however, to Elizabeth Howwasswee, her and assigns, all her

	rights in and to the peat upon said premises.
Lot 294, Page 207	Reserving, however, to Deacon Simon Johnson, Patrick Divine, and John Divine, their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 295, Page 207	Reserving, however, to Deacon Simon Johnson, Patrick Divine, and John Divine, their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 296, Page 207	Reserving, however, to Isaac D. Rose, and his and assigns, all his rights in and to the peat upon said premises.
Lot 298, Page 208	Reserving, however, to Elizabeth Howwasswee, and her and assigns, all her rights in and to the peat upon said premises.
Lot 304, Page 210	Reserving, however, to Isaac D. Rose, and his and assigns, all his rights in and to the peat upon said premises.
Lot 306, Page 211	Reserving, however, to George J. Belain, his and assigns, all his rights in and to the peat upon said premises.
Lot 307, Page 212	Reserving, however, to Tristram Weeks and Louisa David, and their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 308, Page 212	Reserving, however, to Tristram Weeks and Louisa David, and their heirs and assigns, all their rights in and to the peat upon said premises.
Lot 311, Page 213	Reserving, however, any and all right to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 321, Page 218	Reserving, however, to Simon Johnson, and his and assigns, all his rights in and to the peat upon said premises.
Lot 329, Page 221	Reserving, however, to Tristram Weeks, and his and assigns, all his rights in and to the peat upon said premises.
Lot 334, Page 223	Reserving, however, to Abram Rodman, his and assigns, all his rights in and to the peat upon said premises.

Lot 340, Page 226	Reserving, however, to Abram Rodman, his and assigns, all his rights in and to the peat upon said premises.
Lot 351, Page 230	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 352, Page 230	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 353, Page 231	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 354, Page 231	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 355, Page 232	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 356, Page 232	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 365, Page 236	Reserving, however, to Abram Rodman, his and assigns, all his right in and to the peat upon said premises.
Lot 366, Page 237	Reserving, however, to Abram Rodman, his and assigns, all his rights in and to the peat upon said premises.
Lot 366½, Page 237	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.
Lot 369, Page 238	Reserving, however, to Aaron Cooper, and his and assigns, all his rights in and to the peat upon said premises.

Lot 378, Page 242	Reserving, however, to the heirs of Lewis Cook, deceased, and their heirs and assigns, all the rights said Lewis had, at the time of his death, in and to the peat upon said premises.
Lot 419, page 259	Reserving, however, any right or rights to peat on the premises, that may justly belong to any person, or persons, to them, their heirs and assigns.

TITLE 25 - INDIANS
CHAPTER 19 - INDIAN LAND CLAIMS SETTLEMENTS
SUBCHAPTER V - MASSACHUSETTS INDIAN LAND CLAIMS SETTLEMENT

§ 1771b. Approval of prior transfers and extinguishment of aboriginal title and claims of Gay Head Indians

(a) Approval of prior transfers

(1) Any transfer before August 18, 1987, of land or natural resources now located anywhere within the United States from, by, or on behalf of the Wampanoag Tribal Council of Gay Head, Inc., or

(2) any transfer before August 18, 1987, by, from, or on behalf of any Indian, Indian nation, or tribe or band of Indians, of any land or natural resources located anywhere within the town of Gay Head, Massachusetts, including any transfer pursuant to any statute of the State, and the incorporation of the town of Gay Head, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof). Any such transfer and any transfer in implementation of this subchapter, shall be deemed to have been made with the consent and approval of Congress as of the date of such transfer.

(b) Extinguishment of aboriginal title

Any aboriginal title held by the Wampanoag Tribal Council of Gay Head, Inc. or any other entity presently or at any time in the past known as the Gay Head Indians, to any land or natural resources the transfer of which is consented to and approved in subsection (a) of this section is considered extinguished as of the date of such transfer.

(c) Extinguishment of claims arising from prior transfers or extinguishment of aboriginal title

Any claim (including any claim for damages for use and occupancy) by the Wampanoag Tribal Council of Gay Head, Inc., the Gay Head Indians, or any other Indian, Indian nation, or tribe or band of Indians against the United States, any State or political subdivision of a State, or any other person which is based on—

(1) any transfer of land or natural resources which is consented to and approved in subsection (a) of this section, or

(2) any aboriginal title to land or natural resources the transfer of which is consented to and approved in subsection (b) of this section,

is extinguished as of the date of any such transfer.

(d) Personal claims not affected

No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

(Pub. L. 100–95, § 4, Aug. 18, 1987, 101 Stat. 705.)

References in Text

The Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), referred to in subsec. (a), is not classified to the Code. See sections 177, 179, 180, 193, 194, 201, 229, 230, 251, 263, and 264 of this title.

Effective Date

Section effective upon the date on which title of all of private settlement lands provided for in this subchapter to the Wampanoag Tribal Council of Gay Head, Inc. is transferred, with fact of such transfer, and date thereof, to be certified

and recorded by Secretary of the Commonwealth of Massachusetts, see section 11(b) of Pub. L. 100–95, set out as a note under section 1771 of this title.

COMMONWEALTH OF MASSACHUSETTS
LAND COURT
DEPARTMENT OF THE TRIAL COURT

DUKES, ss. MISC. CASE NO. 238738

MARIA A. KITRAS, TRUSTEE, et als.	*
Plaintiffs	*
	*
v.	*
	*
TOWN OF AQUINNAH, et als.,	*
Defendants	*

CERTIFICATE OF SERVICE

I, Nicholas J. Decoulos, do hereby certify that on this day I caused a copy of the following document to be served upon the following counsel and parties of record.

DOCUMENT SERVED:
Plaintiffs' Reply Brief to Defendants' Memorandum of Law

DATE AND MANNER OF SERVICE:
May 7, 2010, First class mail, postage prepaid

COUNSEL AND PARTIES OF RECORD:
See attached service list

Signed under the penalties of perjury this 7th day of May, 2010.

Maria A. Kitras as she is the Trustee of Bear Realty Trust, Bear II Realty Trust and Gorda Realty Trust; James J. Decoulos as he is the Trustee of Bear II Realty Trust and Gorda Realty Trust; Plaintiffs

By their Attorney:

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Maria A. Kitras, Trustee, et al.
v.
Town of Aquinnah, et al.

Massachusetts Land Court No. 238738

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File #5644

May 7, 2010

Massachusetts Land Court
226 Causeway Street
Boston, MA 02114

Re: Anthony C. Frangos, Trustee, et al.
Vs. Town of Aquinnah, et al.
No. 299511

Dear Sir or Madam:

I enclose a Joinder by Plaintiffs in the Plaintiffs' Reply Brief to Defendants' Memorandum of Law (filed in the case of Kitras, et al. v. Aquinnah, et al., Land Court Misc. Case. No. 238739), and a Certificate of Service.

Very truly yours,

Nicholas J. Decoulos

NJD:aw
cc: Service List (w/enc.)

COMMONWEALTH OF MASSACHUSETTS

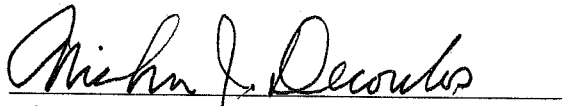
DUKES, ss.

LAND COURT DEPARTMENT
MISC. CASE NO. 299511

ANTHONY C. FRANGOS and JAMES J. DECOULOS as they are the TRUSTEES OF BRUTUS REALTY TRUST, Plaintiffs	
v.	**JOINDER BY PLAINTIFFS IN REPLY BRIEF**
TOWN OF AQUINNAH, IAN A. BOWLES, as he is the SECRETARY OF THE MASSACHUSETTS EXECUTIVE OFFICE OF ENERGY AND ENVIRONMENTAL AFFAIRS, ELIZABETH O'KEEFE, SOUTH SHORE BEACH, INC., DAVID H. SMITH FOUNDATION and VINEYARD CONSERVATION SOCIETY, INC., Defendants	

The Plaintiffs, ANTHONY C. FRANGOS AND JAMES J. DECOULOS as they are the TRUSTEES OF THE BRUTUS REALTY Trust, hereby join the Plaintiffs, Maria A. Kitras, as Trustee of Bear Realty Trust, Maria A. Kitras and James J. Decoulos, as Trustees of Bear II Realty Trust, and Maria A. Kitras and James J. Decoulos, as Trustees of Gorda Realty Trust, in their Reply Brief to the Defendants' Memorandum dated May 7, 2010, filed in the case of Maria A. Kitras, et al. v. Town of Aquinnah, et al., Land Court Misc. Case No. 238738.

Respectfully submitted:



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May 7, 2010

COMMONWEALTH OF MASSACHUSETTS

DUKES, ss.

LAND COURT DEPARTMENT
MISC. CASE NO. 299511

****
ANTHONY C. FRANGOS and *
JAMES J. DECOULOS as they are the *
TRUSTEES OF BRUTUS REALTY TRUST, *
Plaintiffs *
*
v. *
*
TOWN OF AQUINNAH, ET AL.
Defendants *
****

CERTIFICATE OF SERVICE

I, Nicholas J. Decoulos, do hereby certify that on this day I caused a copy of the following document to be served upon counsel and parties of record as follows:

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Joinder by Plaintiffs in Reply Brief

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COUNSEL AND PARTIES OF RECORD:
See attached service list

Signed under the penalties of perjury.

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Anthony C. Frangos, et al., Trustees
v.
Town of Aquinnah, et al.

Massachusetts Land Court No. 299511

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