

## A Little Problem Called Waste

By Judith I. Johannsen

Most people think that real estate law is about ordinary things like neighbors arguing over boundary lines, overhanging trees, or a neighbor not complying with the restrictive covenants the whole community has to follow, but that's not entirely true. Some interesting disputes fall outside these "normal" categories.

For instance, one recent case dealt with the concept of "waste". We typically think of waste as something we roll to the curb on trash day or what we do with time, but in real estate, "waste" is where someone in possession of property (like a tenant or someone with a legal right to live on a property) allows an unreasonable use, substantial physical damage or deterioration of the property's improvements which results in a diminution of the property's value.

In this case, a husband and wife owned a piece of land with a 12 room main house built in 1870 and an accessory dwelling that used to be a barn but which had been converted to a 3 room residence. After owning the property for many years, the couple entered into an agreement to sell their property to a non-profit organization that restored and preserved historic properties. The husband and wife, however, reserved a life estate for themselves.

A life estate is having the legal right to live in or on a property for an amount of time that is measured by one's life. In this case, the measuring lives were those of the couple and whichever spouse lived longer could remain until his/her death.

After the husband died, the wife continued to live in the main house, paid the real estate taxes and insurance, maintained and upgraded the property. However, in 2005 she stopped paying the property insurance, and in 2007 she stopped paying the property taxes.

In January 2008, a fire swept through the main house rendering it uninhabitable so the wife moved into the smaller house. She made no effort to repair the fire damaged property or to prevent more damage.

The non-profit organization, dismayed that no repair work had been done on the house, filed a suit against the wife, alleging she had committed "waste" when she failed to maintain the historic property or repair the fire damage; furthermore, since she had committed waste, the historic property's value had greatly diminished. Therefore, the organization sought money damages from the wife and an order to terminate her life estate.

There is a CT statute (CGS §52-563) that says a life estate tenant who commits waste on the premises is liable to the injured party. In this case, the injured party is the historic preservation organization because it is the owner of the property that was fire-damaged. The only question now was whether or not this life tenant committed waste.

The organization argued it was the wife's responsibility to pay for the fire damage. The wife countered that as a life tenant she had no duty to repair accidental damage she did not cause, but she did have an ongoing duty to keep the property in a reasonable state of repair and to prevent further deterioration. She maintained she was not responsible for the accidental damage to the property unless she was negligent.

The court agreed with the wife, concluding that the fire was not the result of the wife's negligence, therefore, the organization could not recover from her for the waste; however, it could recover for the waste committed by her for not performing ordinary maintenance *subsequent* to the fire.

Lastly, with regard to the organization's request to terminate the wife's life estate, the court found no dispositive statutory language that forfeiture of a life estate is an appropriate remedy for committing waste, so the court's solution was to restrict the wife to living in the property's smaller dwelling.

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