

DEC 12 2006

DOCKETED

COMMONWEALTH OF MASSACHUSETTS

DEC 12 2006

NORFOLK, SS.

PROBATE AND FAMILY COURT
C.A. NO. 0280085-6c2

TOWN OF BRAINTREE,

Plaintiff

v.

THOMAS F. REILLY, as he is the ATTORNEY
GENERAL of the COMMONWEALTH OF
MASSACHUSETTS,

Defendant

COMPLAINT

Pursuant to G.L. c.214, §10B, the Town of Braintree (hereafter "Plaintiff" or "Town") requests that this Honorable Court apply the doctrines of cy pres or deviation to the terms of the charitable trust created by Captain August J. Petersen ("Captain Petersen") under Article Eight of his will filed with the Norfolk County Probate and Family Court as Docket No.161695 to permit the Town to use surplus income earned by the Captain Petersen Trust ("Petersen Trust") for the purpose of funding operational and maintenance expenses associated with the "Petersen Memorial Pool", following the construction of said pool.

1. The Town is a body politic and corporate organized and existing under the laws of the Commonwealth of Massachusetts and located in Norfolk County.
2. Defendant Thomas F. Reilly ("Attorney General") is the Attorney General of the Commonwealth of Massachusetts and is named herein in his capacity as representative of the public interest in the administration of charitable trusts, pursuant to G.L. c.12, §8G.
3. Captain Petersen died testate in Braintree on November 28, 1963.
4. Under Article Eight of his will, Captain Petersen bequeathed to the Town the rest and residue of his estate totaling approximately \$64,349.99 in trust, stating that "[t]he principal and any accumulated income is to be used for the construction of a swimming pool and necessary incidental buildings and equipment on Watson Park, with the said swimming pool to

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be named "THE PETERSEN MEMORIAL POOL." A true copy of the will is attached hereto as Exhibit A.

5. Article Eight of Captain Petersen's will further states that "[i]n the event that the said fund with any addition which the Town may make by appropriation is insufficient for the purpose [of constructing a swimming pool] the income shall be allowed to accumulate and be added to the principal until the fund, together with any such addition, is sufficient for the purpose."

6. Article Eight of Captain Petersen's will makes no provision for funding the operational and maintenance costs following the construction of the swimming pool.

7. The Town of Braintree accepted Captain Petersen's bequest by vote under Article 66 of the March 23, 1964 Annual Town Meeting. A true copy of the Town Meeting vote is attached hereto as Exhibit B.

8. In November of 2000, the Board of Selectmen established the Peterson Pool Siting Committee to determine if there was a suitable location in Watson Park or immediately adjacent thereto for construction of the pool. On March 15, 2002, the Committee, following an extensive investigation into possible sites at Watson Park, issued its final report in which it concluded that there was no possible or appropriate site available at Watson Park or in the immediate vicinity to locate the pool.

9. Because of the lack of suitable land for construction of the swimming pool in Watson Park, it became impossible or impracticable for the Town to carry out the terms of Captain Petersen's bequest.

10. On or about October 24, 2002, the Town, through its Board of Selectmen, filed a petition requesting that this Honorable Court apply the doctrines of cy pres or deviation to the terms of the charitable trust created by Captain Petersen to permit the Town to construct the "Peterson Memorial Pool" in a location other than Watson Park.

11. On November 26, 2002, this Honorable Court (Harms, J.) entered a final judgment allowing the Town to construct the "Petersen Memorial Pool" in a location other than Watson Park. A true copy of the Judgment entered by the Court is attached hereto as Exhibit C.

12. The Town represents that once constructed in its alternative location, the Town shall be responsible for the operation and maintenance associated with "THE PETERSEN MEMORIAL POOL."

13. The Town represents that the current balance in the Petersen Trust exceeds \$1,600,000.00.

14. The Town estimates that \$1,000,000 from the Petersen Trust is required to construct the Petersen Memorial Pool. A true copy of a feasibility study for a similar recreational pool project is attached hereto as Exhibit D.

COUNT I - CY PRES

15. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 15 above as though fully set forth herein.

16. Because the plaintiff does not have sufficient funds to provide for perpetual operational and maintenance costs following the construction of the Petersen Memorial Pool, it has become impossible or impracticable for the Town to carry out the specific terms with respect to the construction of the Petersen Memorial Pool.

17. Captain Petersen's will contains no provision as to the funding of operational or maintenance costs following the construction of the Petersen Memorial Pool in the event that operating or maintaining the pool should become impossible or impracticable for the Town.

18. Captain Petersen manifested a general intention to devote the funds to charitable purposes, specifically for the purpose of providing a swimming pool for the citizens of Braintree, which purpose will be served by allowing the surplus income earned by the Petersen Trust to be used for a similar charitable purpose, i.e. to fund operational and maintenance costs associated with the Petersen Memorial Pool.

19. There is no language in Captain Petersen's will to suggest that the use of the surplus income earned by the Petersen Trust to fund operational and maintenance costs following the construction of the Petersen Memorial Pool would not serve the public interest in accordance with his wishes.

COUNT II -DEVIATION

20. The plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 20 above as though fully set forth herein.

21. Owing to circumstances not known or anticipated at the time of the bequest, i.e. that the Town may not have sufficient funds to provide perpetual operational and maintenance costs following the construction of the Petersen Memorial Pool, the Town is unable to carry out the specific terms of the trust.

22. Captain Petersen's will contains no provision as to funding operational or maintenance costs following the construction of the swimming pool in the event that funding such costs should become impossible or impracticable.

23. Captain Petersen manifested a general intention to devote the funds to charitable purposes, specifically for the purpose of providing a swimming pool for the citizens of Braintree, which purpose will be served by the allowing the surplus income earned by the Petersen Trust to be used for a similar charitable purpose, i.e. to fund operational and maintenance costs associated with the Petersen Memorial Pool.

24. There is no language in Captain Petersen's will to suggest that that the use of the surplus income earned by the Petersen Trust to fund operational and maintenance costs associated with the pool would not serve the public interest in accordance with his wishes.

25. Requiring the Town to comply with the terms of the trust without provision for funding the operational and maintenance costs following the construction of the Petersen Memorial Pool would likely defeat or substantially impair the purpose for which the trust was created.

WHEREFORE, the Plaintiff respectfully requests that this Court order that the terms of the trust created under Article Eight of Captain Petersen's will be administered cy pres or to allow a reasonable deviation from the terms of the charitable trust created by Captain Petersen, pursuant to the Court's general equity powers, to allow the Town to use the surplus income earned by the Petersen Trust for the purpose of funding operational and maintenance costs following the construction of the Petersen Memorial Pool in the Town of Braintree, while retaining the name of Petersen Memorial Pool and placing a suitable plaque indicating it was provided as a memorial to Sadie A. Petersen and Captain August J. Petersen in some form as a memorial as provided in the will; and grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

Plaintiff,

TOWN OF BRAINTREE

By its attorneys,



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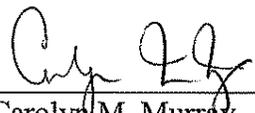
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CERTIFICATE OF SERVICE

I, Carolyn M. Murray, hereby certify that on the below date, I served a copy of the foregoing Complaint, by mailing copy of same, Certified Mail, to the following:

Thomas F. Reilly
Attorney General
Commonwealth of Massachusetts
One Ashburton Place
Boston, MA 02108

Dated: 12/12/10



Carolyn M. Murray