

## Outline Class 09

Q&Session next week.

### *Geragosian and Peters*

#### 1. The basic rule?

- a. What is the rule of the *Geragosian* case?
- b. Whether it makes sense is a question that we will consider below.
- c. The rule is applied in the *Peters* case. Can you think of any reason why it might be more appropriate in the *Peters* case than it was in the *Geragosian* case.

<https://www.google.com/maps/place/11+Abbey+St,+Marshfield,+MA+02050/@42.120079,-70.6769839,14z/data=!4m5!3m4!1s0x89e4a776ae6dff81:0x854344716401bbe2!8m2!3d42.120079!4d-70.6747952> (basic map of Marshfield)

<https://www.google.com/maps/place/33-1+Abbey+St,+Marshfield,+MA+02050/@42.119983,-70.6751443,138m/data=!3m1!1e3!4m5!3m4!1s0x89e4a77153899133:0xabc24b024d7bd013!8m2!3d42.1199967!4d-70.6754648> (aerial view of the properties in question)

- i. Larger encroachment
- ii. Registered land. The encroachment had been there for 20 years and MA has a 20-year S/Lims on real actions.
- iii. Turning the question around, how would Judge Tauro's damage remedy work?
- iv. How would *Peters* have come out had the land not been registered land?

#### 2. Basics of the *Geragosian* case.

- a. What does the situation look like now?

<https://www.google.com/maps/place/Sewall+St,+Somerville,+MA+02145/@42.3930376,-71.0917063,17z/data=!4m2!3m1!1s0x89e370d4266c4e69:0xcdeb45bde1a05998> (map)

[https://www.google.com/maps/place/Sewall+St,+Somerville,+MA+02145/@42.3923669,-71.0927555,3a,75y,90h,90t/data=!3m7!1e1!3m5!1s0dJdWZRk-q6l23WAiDOy-A!2e0!6s%2F%2Fgeo2.ggpht.com%2Fcbk%3Fpanoid%3DodJdWZRk-q6l23WAiDOy-A%26output%3Dthumbnail%26cb\\_client%3Dsearch.TACTILE.gps%26thumb%3D2%26w%3D96%26h%3D64%26yaw%3D359.633%26pitch%3D0!7i13312!8i6656!4m2!3m1!1s0x89e370d4266c4e69:0xcdeb45bde1a05998](https://www.google.com/maps/place/Sewall+St,+Somerville,+MA+02145/@42.3923669,-71.0927555,3a,75y,90h,90t/data=!3m7!1e1!3m5!1s0dJdWZRk-q6l23WAiDOy-A!2e0!6s%2F%2Fgeo2.ggpht.com%2Fcbk%3Fpanoid%3DodJdWZRk-q6l23WAiDOy-A%26output%3Dthumbnail%26cb_client%3Dsearch.TACTILE.gps%26thumb%3D2%26w%3D96%26h%3D64%26yaw%3D359.633%26pitch%3D0!7i13312!8i6656!4m2!3m1!1s0x89e370d4266c4e69:0xcdeb45bde1a05998) (street view of Broadway Somerville)

<https://www.google.com/maps/place/Sewall+Ct,+Somerville,+MA+02145/@42.3930201,-71.0917161,3a,75y,200h,90t/data=!3m8!1e1!3m6!1spZBEEBKsbDXaaLd4THCiQ!2e0!3e1!16s%2F%2Fgeo0.ggpht.com%2Fmaps%2Fphotothumb%2Ffd%2Fv1%3Fbpb%3DChAKDnNIYXJjaC5UQUNUSUxFEiAKEgn9Skkk1HDjiREiFhPgVJ5SyyoKDQAAAAAIAAAAABoECFYQVg%26gl%3DUS!7i16384!8i8192!4m5!3m4!1s0x89e370d424494afd:0xcb529e54e0131622!8m2!3d42.3930176!4d-71.0917144> (street view of Sewall Court)

<https://www.google.com/maps/place/24+Sewall+St,+Somerville,+MA+02145/@42.3930257,-71.0920021,100m/data=!3m1!1e3!4m5!3m4!1s0x89e370d431d0e581:0x21f1687b94296a5f!8m2!3d42.3930257!4d-71.0917252> (Sewall Street and Sewall Court, aerial view)

- b. What did it look like then?



Image courtesy of the Somerville Historical Museum.

- c. What did the lower court hold?
  - d. Why not grant ejectment?
  - e. How to measure damages.
    - i. Loss to plaintiff
    - ii. Benefit to defendant
  - f. What is the effect of granting the injunction? Think about this. What is Geragosian going to do with his injunction?
3. Why did the upper court hold as it did?
- a. Reasons offered:
    - i. “The right of property which the plaintiff seeks to protect is legal, not merely equitable.”
    - ii. “It is not a mere easement. ... although an injunction has often been granted for the protection of an easement.”
    - iii. “Neither is the plaintiff’s right a mere leasehold, soon to expire.”
    - iv. “It is the fee.”
    - v. “The protection by injunction of property rights against continuing trespasses by encroaching structures has sometimes been based upon the danger that a continuance of the wrong may ripen into title by adverse possession or a right by prescription.”
    - vi. “Other cases point out that, since trespassing structures constitute a nuisance [citations omitted], and a plaintiff obtaining a second judgment for nuisance has a right to have the nuisance abated by warrant of the court (G.L. [Ter.Ed.] c. 243, § 3), the denial of an injunction would only drive the plaintiff to a more dilatory remedy to obtain removal or abatement.”
    - vii. “If a landowner should attempt to right his own wrongs, a breach of the peace would be likely to result.”

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- viii. “Rights in real property cannot ordinarily be taken from the owner at a valuation, except under the power of eminent domain.”
- ix. “A particular piece of real estate cannot be replaced by any sum of money, however large, and one who wants a particular estate for a specific use, if deprived of his rights, cannot be said to receive an exact equivalent or complete indemnity by the payment of a sum of money.”
- b. Ways out:
  - i. Equity.
  - ii. “The facts that the aggrieved owner suffers little or no damage from the trespass [citations omitted] that the wrongdoer acted in good faith and would be put to disproportionate expense by removal of the trespassing structures [citations omitted] and that neighborly conduct as well as business judgment would require acceptance of compensation in money for the land appropriated are ordinarily no reasons for denying an injunction. ... Only when there is some estoppel or laches on the part of the plaintiff [citations omitted] or a refusal on his part to consent to acts necessary to the removal or abatement which he demands [citations omitted] will an injunction ordinarily be refused.”
  - iii. “It is true that [in three cases an injunction was denied] because of a hardship ... .”
- 4. Some more “facts”:
  - a. The justices of the Supreme Judicial Court at the time were named Rugg, Crosby, Pierce, Field, Lummus (who wrote the opinion), Qua, and Donahue.
  - b. The Charlestown Five Cents Savings Bank.
  - c. The master’s name was Arnold Leonard. The principals of the Union Realty Co. were named Stoneman and Rosenberg.
  - d. An imaginary conversation in the chambers of the SJC.
- 5. All of this is a bit shocking.
  - a. Should the court have been more upfront about the fact that the case could have come out either way?
  - b. The competence or lack of it of the Union Realty Co.’s lawyers.
- 6. Final question on *Geragosian*: What’s going to happen next? What’s happening now? *Geragosian* as a microcosm of American property law.

The site of the theatre continues to be controversial (from *The Boston Globe*, 1/15/2011):

Stand-off in Somerville

Property owner says mayor’s vision blocked plan for new store

January 15, 2011|Casey Ross, Globe Staff

Jim Cohen figured it would be a slam-dunk: Bring discount retailer Ocean State Job Lot to a vacant building he owns on a rundown block on Somerville’s Winter Hill.

The store would restore some life to the neighborhood, provide several dozen jobs, and offer residents inexpensive food, clothing, and housewares. Or at least that was his plan until he met with Somerville’s mayor, Joseph A. Curtatone, back in the summer of 2008.

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“ ‘Over my dead body,’ ” Cohen remembers the mayor telling him in City Hall. “ ‘I don’t want a dollar store in my town.’ ”

Curtatone’s hard line and the city’s ultimate refusal to allow Ocean State Job Lot to move in prompted Cohen to sue the city in county court, with the fight becoming a test of the mayor’s effort to reinvent many of Somerville’s tired commercial districts with more modern homes and retail outlets.

Although a Curtatone spokesman denies he ever made the “over my dead body” comment, the mayor’s administration has made no secret of its plans to remake huge swaths of the city’s real estate. Curtatone is a chief backer of the effort to rebuild Assembly Square with a massive, mixed-use development, and his planning department has developed detailed blueprints for overhauling many of the city’s shopping districts and neighborhood squares.

Cohen said in his lawsuit that Curtatone repeatedly pushed him to rebuild the property at 299 Broadway, formerly a Star Market, into a mixed-use development with several floors of housing and retail operations on the ground floor. Cohen said that idea is unworkable, especially since it would involve redeveloping adjacent property he doesn’t own.

But after he rebuffed the mayor’s suggestion and inked the lease with Ocean State Job Lot, the city’s planning board refused to provide the special permit he needs to renovate the building and open the new store.

“The mayor says Ocean State does not fit into his plans, but how can he just sit there and allow this property to stay vacant?” said Cohen, who is asking the court to invalidate the board’s decision. He said Ocean State Job Lot wants “to come in here and spend \$1 million to redo the property and hire 50 to 60 workers.”

A spokesman for Curtatone said the mayor was not available for comment because he is enrolled in a two-week course at Harvard University’s Kennedy School of Government. The spokesman, Michael Meehan, denied the allegations in Cohen’s lawsuit. Meehan said the planning board rejected Ocean State Job Lot because the store did not fit new zoning guidelines the city adopted last year, a process that coincided with the battle over Cohen’s property.

Meanwhile, Ocean State Job Lot said the city’s refusal felt like a slap at the company. “We certainly did not feel welcomed into Somerville by the mayor,” said chief financial officer John Conforti. The company, with 40 stores in Massachusetts, would still move into 299 Broadway if Cohen wins his fight, he added.

The city’s new zoning guidelines for Winter Hill reflect the kind of changes Curtatone wants to see across Somerville. Currently, the area is a dilapidated throwback to the 1970s, with Broadway populated by a haphazard mix of sub shops, hair salons, and liquor stores.

To return vibrant street life to the neighborhood, the city wants to limit development to dense blocks of residences, offices, and smaller retail stores that would discourage sprawling, plaza-like properties with vast surface parking lots.

In rejecting Cohen’s Ocean State Job Lot proposal, the city’s zoning board wrote in August 2010 that it was inconsistent with the city’s guidelines and would “limit the ability to bring new amenities to the Winter Hill neighborhood.”

Monica Lamboy, Curtatone’s chief of planning, said the neighborhood is poised for dramatic changes over the coming years.

The Assembly Square project, for example, will add a new Orange Line stop near the base of Winter Hill and will result in construction of a new mini-city of homes, stores, a cinema, offices,

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and hotels. “The mayor wants dynamic, transit-oriented neighborhoods where there are employment and housing opportunities, and great paths and open spaces, ” Lamboy said. “The idea is to support our existing neighborhoods and transform the areas that have been left behind.”

Among the anchors of the new Assembly Square: popular Swedish furniture retailer IKEA, whose store opening several years ago in Stoughton generated huge crowds and long lines of traffic.

Cohen said, however, that the project is moving slowly, and the city is trying to force him to buy into a renaissance that is not materializing. “They’ve restricted any other use than the development they want,” he said. “I own the property, and I can’t do anything with it.”

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[Editor’s note: As of September 11, 2013, Mr. Cohen’s company lost its suit in the Massachusetts Land Court, but development of the site is still ‘on hold’.

<http://patch.com/massachusetts/somerville/city-wins-winter-hill-star-market-lawsuit#.VB48TleaWrk> ]