

COMMONWEALTH OF MASSACHUSETTS

ESSEX, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. ESCV2006-02328

WILLIAM M. LONERGAN, et al,

Plaintiffs,

v.

JAMES W. FOLEY, et al.,
FEOFFES OF THE GRAMMAR
SCHOOL IN THE TOWN OF IPSWICH,

Defendants,

v.

DISTRICT ATTORNEY FOR THE
ESSEX DISTRICT, et al.,Additional Defendants
in Counterclaim,STIPULATION

WHEREAS, a dispute has arisen between the Defendants, Plaintiffs-in-Counterclaim, Feoffees of the Grammar School in the Town of Ipswich ("Feoffees"), the owners, in trust for the benefit of the Ipswich Public Schools, of lots of land in Little Neck, Ipswich, Massachusetts, and certain Defendants-in-Counterclaim identified in Schedule A attached hereto, who are occupying and using said lots, hereinafter referred to as "Occupants," as to, among other issues, the Occupants' alleged rights to continued occupancy; and

WHEREAS, the Feoffees and Occupants have agreed on both the manner and forum in which those alleged rights to continued occupancy should be adjudicated and the obligations of the Feoffees and Occupants pending that adjudication;

NOW, therefore, the Feoffees and Occupants stipulate and agree as follows:

1. The Feoffees contend that the Occupants were tenants of the Feoffees; that the Feoffees have lawfully terminated those tenancies, effective January 31, 2007; and that the Feoffees are entitled, as of February 1, 2007, to maintain summary process actions against the Occupants resulting in judgments for possession for the Feoffees.
2. The Occupants contend that they are not merely tenants of the Feoffees, but rather occupy the Feoffees' lots in some other capacity; that, if they are tenants of the Feoffees, those tenancies have not been lawfully terminated; and that, if they are tenants and their tenancies have been lawfully terminated, they, nonetheless, have a continuing right to occupy the lots at issue.
3. The Feoffees will present to this court in this action, and not by way of summary process actions, the issue of whether the Feoffees are entitled to possession of the lots. The Feoffees will seek a judgment for possession effective June 30, 2007. The Occupants agree that, in the event the court determines that they are tenants whose tenancies can be terminated by the Feoffees, their tenancies shall be declared terminated without any further or additional notice necessary to terminate their tenancies, the Occupants agreeing that they have received adequate notice.
4. In the event the court declares that the tenancies can be terminated by the Feoffees and, by reason of the language of paragraph 3 hereof, that the tenancies have been terminated, the court will determine whether judgment for possession shall enter for the Feoffees; the Occupants taking the position that the Feoffees are not entitled to possession even if the Occupants' tenancies are terminated.

5. In consideration of the Feoffees agreeing to proceed for a judgment for possession effective no earlier than June 30, 2007, each of the Occupants shall make the following payments to the Feoffees:

(a) Rent for the period January 1, 2007 to June 30, 2007, in an amount equal to \$2,500.00 for the Occupants who have occupied the lots seasonally and \$2,750.00 for the Occupants who have occupied the lots on a year-round basis, the rent to be paid on or before March 13, 2007;

(b) An amount equal to the real estate taxes for fiscal year 2007, less any real estate tax payments for said period previously made by the Occupant, assessed against both the lot and the cottage, said amount to be paid as follows: on or before March 13, 2007, an amount equal to the tax payment due for the first half of fiscal year 2007; and, within fifteen days of invoice, the balance of all such taxes.

(c) The sum of \$480.00, representing the cost of the operation and maintenance of the common wastewater collection system operated by the Feoffees for the months of July, 2006, to June 30, 2007, said sum to be paid on or before March 13, 2007;

(d) A sum equal to the cost of the usage of said system by each Occupant during the period July 1, 2006 to January 31, 2007, based upon metered water usage by each Occupant, which cost shall equal \$.095 per gallon of water used by the Occupant, which sum shall be paid within fifteen days of the date of invoice for same from the Feoffees; and

(e) Within fifteen days of date of invoice, a sum equal to the cost of the Occupant's usage of said system during the months of February through June, 2007, calculated as set forth above.

6. The Feoffees and Occupants shall jointly move the court to enter a separate and final judgment on the issue of possession as to each Occupant so as to permit an appeal by the non-prevailing party. The parties will urge that the form of judgment be such as to minimize the docket fee for any such appeal.

7. In the event of a judgment for possession for the Feoffees effective June 30, 2007 entered on or before that date, and an appeal by some or all of the Occupants who seek to remain in possession pending the appeal, each Occupant who appeals may remain in possession pending appeal so long as the Occupant makes the following payments to the Feoffees after June 30, 2007:

(a) a monthly payment for use and occupancy, payable in advance, of \$810.00 for a lot used seasonally and \$900.00 for a lot used on a year-round basis;

(b) an amount equal to the real estate taxes assessed against the lot and cottage for the period of occupancy, payable within fifteen days of the date of invoice for same, which taxes may be invoiced in such increments as the Feoffees, in their sole discretion, determine;

(c) a sum equal to the cost of the usage of the aforesaid common wastewater collection system, based upon metered water usage by each Occupant, at the rate per gallon charged by the Feoffees to their lessees, payable within fifteen days of date of invoice.

8. In the event no judgment on the Feoffees' claim for possession has entered by June 30, 2007, the Occupants shall make the following payments after June 30, 2007 and until a judgment is entered on the issue of possession:

(a) To the Feoffees:

(i) a monthly payment for use and occupancy, payable in advance, of \$420.00 for a lot used seasonally and \$460.00 for a lot used on a year-round basis;

- (ii) the payments described in Paragraph 7(b) and (c); and
- (iii) on the first day of each month, the sum of \$40.00 for the operation and maintenance of the aforesaid system.

and

- (b) To Escrowee(s) (To be determined)

- (i) an amount equal to the difference between the rent charged by the Feoffees to the lessees, calculated on a monthly basis, and the payment for use and occupancy described in Paragraph 8(a)(i) above, less \$40;

9. In the event of a judgment for possession for the Feoffees which enters after June 30, 2007, and an appeal by some or all of the Occupants who seek to remain in possession pending the appeal, each Occupant who appeals may remain in possession pending appeal so long as the Occupant makes the following payments to the Feoffees after the date such judgment enters:

- (a) a monthly payment for use and occupancy, payable in advance, equal to the rent charged by the Feoffees to the lessees, less \$40; and

- (b) the payments described in Paragraph 8(a)(ii) and (iii).

10. The payments due to the Feoffees hereunder for Occupant's usage of the common wastewater collection system may, at the election of the Feoffees, be directed to LNWS, LLC.

11. In the event a lot is occupied by more than one Occupant, the payment obligations herein are joint and several. Failure by an Occupant or Occupants of a lot to make a payment required by this Stipulation shall result in an action of summary process instituted by the Feoffees against such Occupant(s) for non-payment of rent and the only defenses in such action shall be payment in accordance with the applicable statute and those based upon or arising out of

conduct occurring subsequent to the execution of this Stipulation. Time is of the essence as to all payments.

12. The escrow amount set forth in Paragraph 8(b) shall be disposed of by agreement of the Feoffees and Occupants, failing which agreement, by order of the court.

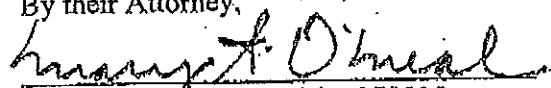
13. In the event, on the issue of possession, the court finds for an Occupant, monies for the period after June 30, 2007 shall be paid by the Occupant to the Feoffees in accordance with court order.

14. As to issues covered by this Stipulation, the terms hereof shall control and be binding upon the Feoffees and Occupants. As to issues not covered by this Stipulation, the Feoffees and Occupants reserve all claims and defenses pertaining to same. Acceptance of rent and other payments by the Feoffees shall not create a new tenancy with any of the Occupants.

James W. Foley, et.al, Feoffees of the
Grammar School in the Town of Ipswich
By their Attorney,

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William M. Lonergan and those Defendants-
In-Counterclaim Identified in Schedule "A"
By their Attorney,


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Dated: March 6, 2007