



Condominium Unit Owners May Not Adversely Possess Common Areas

The Massachusetts Land Court recently decided an issue of first impression in the Commonwealth: whether condominium unit owners may adversely possess a portion of a common area. The court held that they cannot.

In *Pisano v. Thunberg*, Plaintiffs Charles Pisano and George Nader (“Plaintiffs”) owned a condominium unit in Provincetown, Massachusetts. When Plaintiffs purchased their unit in 2002, the prior owners informed them that the deck of their unit extended into the common area and had done so for years. Plaintiffs then continued to exclusively use and maintain that deck in a manner visible to the other unit owners. Plaintiffs eventually brought suit seeking to establish ownership over that portion of the common area by way of adverse possession. Plaintiffs argued that the condominium statute, G.L. c. 183A, does not expressly bar such a claim.

The court allowed defendant trustees’ motion for judgment on the pleadings, though it noted the absence of authority from other jurisdictions on this issue. The court relied on the language of various provisions in Chapter 183A, including a provision prohibiting alteration of percentage interests in common areas absent the consent of all unit owners. The court explained that Chapter 183A provides “a scheme of common ownership of common areas that is antithetical to adverse possession by one of the unit owners.” To allow one unit owner to take title to a common area by adverse possession would allow that unit owner to “expand their unit into the common area without the consent of all unit owners” and would render the condominium statute “meaningless.”

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