



Missing comma key in Cape lawsuit

Appeals court reverses dismissal of Cape lawsuit, citing grammar issue

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The letter — and grammar and punctuation — of the law were at the heart of a state appeals court decision to send a lawsuit against the owner of the Cape Codder Resort and Spa back to Barnstable Superior Court for trial.

The lawsuit charges the Catania Hospitality Group with failing to properly distribute tips to employees between 2003 and 2006. The appeals court on Friday ruled that a lower court judge erred in granting a defendants' motion to dismiss the case.

"It's a bit of a grammatical interpretation," said defendant William Catania, president of the company. "It comes down to the word 'or.'"

The lawsuit was filed in April 2008 by two former Cape Codder employees, Walter Bednark and Anthony D'Allessandro. The two plaintiffs, both of whom tended bar at special functions, claimed their employer added an 18- or 19-percent fee to the bill for these events, but that the additional money was not distributed to the servers.

The defendants — Catania and his company — claimed that, by calling this additional charge an "administrative fee," they made it clear the money was not meant to be a gratuity.

Initially, a judge agreed; in July 2009, the case was dismissed.

A few months later, however, the plaintiffs appealed on the grounds that the law's language had been misinterpreted.

In dismissing the case, Judge Christopher J. Muse agreed the term "administrative fee" satisfied the law. "The appeals court said, 'No, that's not true,'" said the plaintiffs' attorney Hilary Schwab, from Lichten & Liss-Riordan in Boston.

Catania is displeased with the decision.

"We disagree and we're very disappointed with the appeals court ruling," he said. "We care about all our employees and we would not have survived 37 years in the hospitality business if we didn't take good care of our employees."

In the discussion that accompanied the decision, a three-judge panel of the appeals court explained that the ruling hinged on an analysis of antecedents, modifying clauses and one fatefully nonexistent comma.

The defendants cited a portion of the law that allows fees — separate from tips — to appear on bills as long as "the employer provides a designation or written description of that house or administrative fee" explaining that the charge is not a gratuity.

The plaintiffs' side, however, claimed the label "administrative fee" did not adequately inform customers that the money was not a tip.

But, the defense argued, the requirement to clarify the nature of the fee applies only to a "written description," not a "designation." The term "administrative fee" is, indeed, a designation and thus satisfies the law, the defense said.

In the end, the appeals court determined that, because the two terms are joined with the word "or" and not separated by a comma, the law's intent was for the nature of the fees to be made clear, as either a written description or another form of designation.

Also, the term "administrative fee" is not widely understood to be something other than a service fee, making the label insufficient, the ruling concluded.

Catania's business is still using the term "administrative fee," which he still believes to be the legally correct approach. He also noted that adopting the administrative fee has allowed the company to pay servers an hourly rate well above minimum wage — \$12 to \$14.25 per hour, according to the ruling.

Previously, Catania said, servers received an hourly wage of less than \$3 and depended on tips to boost their income.

The case will now return to Barnstable Superior Court, where a judge will call the parties together to set a trial date, Schwab said.

Friday's decision, she said, gives her reason to be optimistic about the outcome of a trial.

"The issue for trial would be, what did customers reasonably expect the charge to be?" Schwab said.

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