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Bubis v. Kassin, 960 A.2d 779 (N.J. Super. Ct. App. Div. 2008)

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view. Thus, the court held that the informal letter sent to the Howells was reviewable under Nevada law. Next, the court explained that a writ of mandamus will not issue unless the respondent has no plain, speedy, and accurate remedy in the ordinary course of the law. In this case, the Howells could not rely upon mandamus because of the availability of the alternative legal remedy of judicial review. Thus, the court held that judicial review is the proper procedural mechanism for reviewing a State Engineer's decision. Furthermore, the court held that only a court of competent jurisdiction has the power to determine conflicting claims to ownership to a water right. Finally, the court held that because the State Engineer never had the power to resolve title questions, and the 2005 legislative amendments merely reaffirmed this, the amendments could not provide the basis for an appeal. However, the court noted that its decision did not preclude the Howells from contesting title ownership to the water rights in a quiet title action in district court.

As a result, the court affirmed the district court's denial of the Howells' petition for judicial review.

Allison Graboski

NEW JERSEY

Bubis v. Kassin, 960 A.2d 779 (N.J. Super. Ct. App. Div. 2008) (holding that the Public Trust Doctrine does not: (1) protect private views of the ocean from obstruction by the public's use of the beach below the high water mark, or (2) guarantee public access to a private oceanfront property devoted to uses other than public use.

Jack and Joyce Kassin (the "Kassins") own approximately 650 feet of oceanfront property in the Village of Loch Arbour and use it strictly for their own private enjoyment. The remaining 350 feet of oceanfront property in Loch Arbour is a public beach that a municipality owns and operates. On June 27, 2004, Sophie Bubis ("Mrs. Bubis") accessed the Kassins' beachfront property through a public access path and placed her beach chair below the mean high water mark (the "foreshore") directly in front of one of the Kassins' beach huts. Mrs. Bubis refused to relocate when a lifeguard, employed by the Kassins, asked Mrs. Bubis to move due to the obstruction of the Kassins' view. Mrs. Bubis left only after the police served her with a complaint and summons for defiant trespass.

Mrs. Bubis subsequently filed a motion for enforcement of litigant's rights in the Chancery Division of the Municipal Court alleging the Kassins interfered with her rights under the Public Trust Doctrine as well as her rights to use a portion of the Kassins' property above the foreshore. After an evidentiary hearing, the trial court concluded the Kassins could limit the public's use of the foreshore. The trial court allowed recreational activities such as surfing and fishing and reasonable rest periods within the foreshore; however, the trial court explic-

itly excluded sunbathing activities and placing beach chairs and other paraphernalia within the foreshore. Mrs. Bubis appealed to the Superior Court of New Jersey, Appellate Division (the "court").

The court began its analysis by restating that privately owned oceanfront property only extends to the high water mark. The State owns the foreshore in trust for its citizens. The court then emphasized that the public's right to use property held in trust extends to recreational uses regardless of the property owner. From this, the court concluded that although a private party that owns the property above the high water mark may regulate the use of the foreshore for safety purposes, that private party may not limit use of the foreshore merely to enhance the enjoyment of their own property. Thus, the Kassins violated Mrs. Bubis' rights when their lifeguard directed her to move her beach chair so that the Kassins' view would remain unobstructed.

The court then stated that the Public Trust Doctrine may require a right of public access to a privately-owned area. Relying on *Mathews v. Bay Head Improvement Ass'n* the court reiterated the four factors to be considered: (1) the location of the dry sand area in relation to the foreshore; (2) the extent and availability of publicly-owned upland sand area; (3) the nature and extent of the public demand for beach access; and (4) the usage of the upland by the owner as a commercial or business enterprise. The court applied these factors and determined that the public did not deserve a right to access the Kassins' upland property. First, the court reasoned that a publicly owned upland sand area is readily available in the property adjacent to the Kassins'. Second, the court noted that the adjacent publicly owned beach satisfied the public demand for beach access. Finally, and most notably, the court found that the Kassins did not use their property to conduct a business enterprise and thus the government could not create a right of public access without paying just compensation. Thus, Mrs. Bubis and the public may recreate and sunbathe within the foreshore, but Mrs. Bubis and the public may not use the Kassins' property under the Public Trust Doctrine.

Ultimately, the court reversed the trial court as to the limitations imposed on the use of the foreshore, but affirmed the limitations imposed on the use of the Kassins' private property.

Cody Doig

TEXAS

City of Del Rio v. Clayton Sam Colt Hamilton Trust, 269 S.W.3d 613 (Tex. App. 2008) (affirming the district court's holding that a landowner may reserve groundwater rights from the conveyance of a surface estate, and that the rule of capture will not permit appropriation of otherwise validly severed groundwater rights).

The Clayton Sam Colt Hamilton Trust ("Hamilton Trust") owns a 3,200-acre ranch in Val Verde County, Texas. The ranch lies above