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Higgins v. Vill. of Orchard Park, 716 N.Y.S.2d 845 (N.Y. App. Div. 2000)

## NEW YORK

**Higgins v. Vill. of Orchard Park, 716 N.Y.S.2d 845 (N.Y. App. Div. 2000)** (holding the trial court improperly denied property owners' injunction and summary judgment motion because the property owners had established nuisance as a matter of law).

In April 1995, Village of Orchard Park ("Orchard") entered an agreement with Richard and Ruth Higgins to alleviate flooding caused by Orchard's discharge of water onto the Higgins' property. The agreement decreed that Orchard would install a drainage channel through the Higgins' land, which connected to a natural drainage ditch located on adjoining property. However, the adjoining property owner objected, resulting in Orchard stopping the channel on the Higgins' land and, instead, installing a drainage gate.

The Higgins brought suit in June 1998, alleging, among other things, negligence, breach of contract, continuing trespass, and nuisance. The Higgins also sought an injunction to enjoin Orchard from continuing to discharge surface water onto their property. The trial court denied both the injunction and Higgins' summary judgment motion concerning the nuisance action. Additionally, the trial court denied the Higgins' motion to add causes of action for inverse condemnation or de facto taking, abuse of process, prima facie tort, and violations of the Higgins' Equal Protection rights. Orchard moved to dismiss the negligence and breach of contract actions as time barred, and to dismiss the continuing trespass and nuisance action because the Higgins' alleged failure to state in their complaint that they had complied with relevant law. The trial court denied the dismissal motions.

On appeal, the Supreme Court of New York, Appellate Division reversed the trial court's denial of Orchard's dismissal motions with regard to the negligence and breach of contract actions, finding such actions were time barred. The appellate court also found the Higgins had established, as a matter of law, that Orchard unreasonably created a drainage channel that moved water from one portion of the Higgins' property to another. Furthermore, the appellate court concluded that once Orchard installed the drainage channel, it knew flooding had resulted. Thus, the appellate court held the trial court erred both in denying the Higgins' summary judgment motion on the private nuisance claim and in denying the injunction. Moreover, the appellate court found the trial court erred in denying the Higgins' motion seeking leave to amend the complaint to add a cause of action for inverse condemnation or a de facto taking. However, because the other causes of action the Higgins wished to add either lacked merit or were insufficiently pled, the appellate court declared the trial court properly denied those causes of action.

Finally, the Higgins alleged Orchard's building inspector's

building permit denial was arbitrary and capricious. The appellate court found that Higgins' proper remedy was to challenge the building inspector's action through a *CPLR article 78* proceeding, and, thus, converted the action to the proper proceeding.

*Makayla A. Shannon*

**LaSala v. Terstiege, 713 N.Y.S.2d 767 (N.Y. App. Div. 2000)** (holding the Town of Babylon failed to meet the burden of proof to establish good title to land situated under the water of Great Neck Creek).

The Town of Babylon ("Town") appealed an order from the Supreme Court of New York, Suffolk County granting Anthony LaSala's motion for summary judgment. The Town also appealed the same court's order dismissing the Town's counterclaim regarding title to land situated under the water of the Great Neck Creek ("Land").

LaSala originally brought the action to quiet title to the Land. In order for the Town to prevail, it was required to show possession and good title, and, according to Real Property and Proceedings Law ("RPAPL") article 15, could not rely on the weakness of the LaSala's title, to prevail. The Town asserted it possessed superior title to the Land based on grants issued by Colonial governors in 1666, 1688, and 1694. The Town also asserted no conveyance to an individual existed. The earlier conveyances granted the Town title to all land lying under tidewaters. Therefore, the Town needed to prove Great Neck Creek was defined as tidewater.

LaSala provided the court with an unbroken chain of title dating back to 1831. Each conveyance granted title to land "bounded on the east by Great Neck Creek" or "with title running to the center of Great Neck Creek."

The court stated the Town failed to show Great Neck Creek was considered tidewater. Therefore, the Town failed to meet its burden of proof. The court further asserted LaSala's title fell within the scope of an earlier holding. The previous court found, in the absence of express language in the conveyance, the title to a non-tidal stream is presumed to extend to the center of that stream.

The court, in reviewing all documents and evidence, determined the supreme court properly granted LaSala's motion for summary judgment, and validated LaSala's title to the Land.

*Lynne Stadjuhar*

**Water Auth. of W. Nassau County v. Lockheed Martin Corp., 714 N.Y.S.2d 726 (N.Y. App. Div. 2000)** (holding the statute of limitations barred the civil action instituted by the Water Authority of Western Nassau County for damages to real property caused by ground water contamination).