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LaSala v. Terstiege, 713 N.Y. App. Div. 2000)

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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).