

1-1-2001

## Water Auth. of W. Nassau County v. Lockheed Martin Corp., 714 N.Y.S.2d 726 (N.Y. App. Div. 2000)

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William H. Fronczak, Court Report, Water Auth. of W. Nassau County v. Lockheed Martin Corp., 714 N.Y.S.2d 726 (N.Y. App. Div. 2000), 4 U. Denv. Water L. Rev. 510 (2001).

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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).

This case involved a claim by the Water Authority of Western Nassau County (“Water Authority”) against Lockheed Martin Corp. (“Lockheed”) for damages sustained to its real property from ground water contamination caused by operations at Lockheed’s facility, which was adjacent to the Water Authority’s property.

In 1994, the Water Authority investigated the feasibility of purchasing a portion of the Jamica Water Supply Co. (“Jamica”), located in Nassau County. On May 26, 1996, after negotiations the previous year, the Water Authority purchased Jamica’s assets in Nassau County, which included the land in this action and a water treatment facility located on the land. Subsequently, the Water Authority hired an engineering firm to analyze the ground water contamination at and around the water treatment facility. In August 1998, the engineering firm reported both that ground water contamination existed and the Lockheed facility—adjacent to such property—was the source.

On December 30, 1998, the Water Authority commenced this action in the Superior Court of Nassau County against Lockheed for damages to its real property from the ground water contamination. Lockheed filed a motion to dismiss, arguing the relevant statute of limitations barred the action. The superior court denied Lockheed’s motion, and Lockheed appealed the decision to the Supreme Court of New York, Appellate Division, Second Department.

The supreme court determined that, contrary to the Water Authority’s contention, the three-year statute of limitations had expired. The three-year statute of limitations commenced from the date the Water Authority discovered the injury or from the date, when through reasonable diligence, the Water Authority should have known of the injury, whichever occurred earlier. The supreme court found the property purchased by the Water Authority in 1996 had been contaminated since 1989, and Jamica built the water treatment plant to remove such contamination. The supreme court also determined the Water Authority should have discovered the contamination problem in 1994 “through reasonable diligence” during its feasibility study conducted that year. However, the supreme court also noted that even if the Water Authority did not find out about the contamination in 1994, it should have definitely discovered the contamination problem in the fall of 1995, when negotiations to purchase the Jamica’s assets included the water treatment facility. Therefore, the supreme court concluded that when the Water Authority commenced this action in December of 1998, the three-year statute of limitations had run because the Water Authority should have known of the contamination at least by the fall of 1995.

Additionally, the supreme court dismissed the Water Authority’s claim that its action was timely commenced under the extension provision of the statute of limitations. The supreme court determined the extension provision was inapplicable because sufficient technical, scientific, and medical knowledge used to determine the cause of contamination existed during the relevant time period.

*William H. Fronczak*