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Long Beach Association, Inc. v. Jones, 697 N.E.2d 208 (Ohio 1998)

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Both parties appealed the superior court ruling. The plaintiffs challenged the court's finding that the defendants' property extended to the high water mark. The defendants challenged the location of the plaintiffs' deeded right-of-way.

The New Hampshire Supreme Court upheld the superior court ruling that the defendants' property extended to the high water mark. Because the grantor worded the defendants' deed ambiguously, the Court used extrinsic evidence to find the grantor's intent. The defendants introduced, and the court accepted, a letter from the grantor's attorney that stated that the grantor intended to convey complete title extending to the shore. Further, the supreme court rejected the plaintiffs' contention that they owned the land by prescription by finding that the defendants permitted the plaintiffs to use the beach; thus, the plaintiffs did not satisfy prescription's adverse element.

Additionally, the supreme court overturned the superior court ruling concerning the location of the plaintiff's deeded right-of-way. The supreme court found that the ruling of the lower court contradicted the deed's plain language because it created a right-of-way that bisected the defendants' properties. Both the defendants' and the plaintiffs' deeds dictated that the right-of-way separated the defendants' properties.

Madoline Wallace

OHIO

Long Beach Association, Inc. v. Jones, 697 N.E.2d 208 (Ohio 1998) (holding that a plat for a block containing a lagoon did not create a separate subdivision which would prevent owners of lots in other blocks of the subdivision from using the lagoon).

In 1923, the Long Beach Company ("Company") submitted a plat for subdivision. It included blocks A, B, and C. The Company subdivided only blocks A and C into lots at this time. The Company did not subdivide Block B, situated between blocks A and C, into lots until the Company submitted a separate plat in 1927. The 1927 plat, entitled "Long Beach Subdivision of Block B," stated that Lot E, which included a lagoon and private lane, "[was] for the use of lot owners within the subdivision." The appellants purchased lots in Block B and contended that the language in the plat dedication supported the claim that the lagoon was for the exclusive use of the residents of Block B. The trial court dismissed all of the appellants' claims. Upon appeal, the court of appeals held that the trial court erred in dismissing the counterclaims of trespass, conversion, and unjust enrichment, and affirmed summary judgment on the claim of

intentional infliction of emotional distress. Additionally, the court of appeals held that the trial court erred in its interpretation of the 1927 plat and found in favor of the appellants as to the meaning of the language in the plat.

The Ohio Supreme Court held that the wording in the 1927 plat was clear and unambiguous in stating that all residents of the Long Beach subdivision had use of the lagoon, which included the residents of Blocks A, B, and C. The court noted that where terms in an existing contract are clear and unambiguous, the court could not in effect create a new contract by finding an intent not expressed in the clear language employed by the parties. Applying this principle, the court concluded that if the drafters intended to delineate an entirely new subdivision, they would have done so by eliminating any reference to it as being a part of the general subdivision. Furthermore, the court concluded that the language in the plat clearly established Block B as part of the general subdivision. The court rejected the appellants' argument that there was any language to indicate an intent to remove Block B from the general subdivision, which would give exclusive use of the lagoon to residents of Block B. Therefore, the use of the private lane and the lagoon were not exclusive to the residents of Block B. The Supreme Court of Ohio reversed the court of appeal's decision and reinstated the trial court's judgment.

Lori Asher

PENNSYLVANIA

Adams Sanitation Co. v. Department of Env'tl. Protection, 715 A.2d 390 (Pa. 1998) (holding that the Department of Environmental Protection is permitted to order an owner or occupier of land to remedy a contaminated condition, regardless of fault or knowledge).

Adams Sanitation Company ("ACS") entered into a lease with Netta S. Deatruck to operate a sanitary landfill on a 108 acre parcel and, in 1979, obtained a permit from the Pennsylvania Department of Environmental Protection ("DEP") allowing it to dispose of solid waste on the site. In October of 1983, Keystone Sanitation Company ("Keystone") acquired ASC's assets, name, tradename, lease rights, and obligations to Deatruck. In November, 1983, Keystone assigned its rights and obligations under this lease to its new, wholly owned subsidiary, known as Adams Sanitation Company, Inc. ("Subsidiary"). At that time, ASC had filled seventy-eight acres of the 108 acre parcel of land. The Subsidiary applied and received a permit from DEP allowing it to fill the remaining thirty acres. DEP notified the Subsidiary that it was responsible for the water supply contamination on a residential tract of land adjacent to the seventy-eight acre site