

SHORT FORM ORDER

SUPREME COURT - STATE OF NEW YORK

Present:

HON. JOSEPH A. DE MARO

Justice

CITY OF LONG BEACH,

TRIAL/IAS, PART 8
NASSAU COUNTY

Plaintiff,

MOTION DATE:

July 21, 2003

INDEX No. 11289/00

-against-

SEQUENCE No. 1, 2, 3

VERA E. TROLF, CATHERINE RITA GILLAM,
THOMAS MERCANTE, GREGORY J. QUINN, JR.,
KEVIN BRADDISH, THOMAS NELSON, WILLIAM PATTI,
NETTI PATTI, EDWARD MICHAEL LESLIE, THOMAS
V. WHITBREAD, THOMAS GILLAM, FRANCA ZULLO,
JOHN DOE and JANE DOE (names being intended
to be fictitious),

Defendants.

The following papers read on this motion:

Notice of Motion and Supporting Papers
Notice of Cross-Motion and Supporting Papers
Notice of Cross-Motion and in Opposition to Plaintiff's Motion
Plaintiff's Memorandum of Law in Support
Memorandum of Law in Support of Plaintiff's Memorandum of Law
in Support
Plaintiff's Reply Memorandum of Law in Support and in
Opposition to Defendants' Cross-Motion
Sur-Reply Memorandum of Law in Support of Plaintiff's
Memorandum of Law in Support
Affidavit
Affirmation in Opposition to Plaintiff's Motion
Reply Affirmation in Support of Cross-Motion and in Opposition
to Plaintiff's Motion
Reply Affirmation in Further Support of Cross-Motion and in
Opposition to Plaintiff's Motion
Reply Affirmation
Sur-Reply Affirmation in Support of Cross-Motion and
Opposition to Plaintiff's Motion
Sur-Reply Affirmation

These are cross motions for summary judgment.

Plaintiff is a City and became such in 1922; defendants are owners of property situated on "Water" Street in Long Beach between Chester Street and Grand Blvd.. Thomas Mercante is substituted here for defendants Tomas and Anita Myles.

Plaintiff asks the Court to declare that the plaintiff, City, owns Water Street or at least has a easement as a public street over it, that the plaintiff, City has full Reparian and "littoral" rights; barring forever defendants claims of title and enjoining defendants use of Water Street and directing defendants to remove all improvements and personal property from the bed of Water Street. Defendants, Catherine Rita Gillam, Quinn, Patti and Whitbread, move to deny plaintiffs claims, declaring defendants have all right, title and interest in the bed of Water Street, declaring the plaintiff does not have any right of interest in the street and awarding damages for costs in the action.

Defendants, Trolf & Leslie, move for summary judgment on their counterclaim (barring plaintiff's claim) and dismissal of plaintiff's cause. Defendants, Thomas Mercante, Nelson, Braddish, Thomas Gillam, and Zullo (now known as Francesca Gillam), oppose plaintiff's application adopting the arguments of defendants Catherine Rita Gillam, et al.

Water Street has been the subject of prior litigation. Feldman v. McAvory, 7 Misc.2d 709, in re school site in the City of Long Beach, 226 NYS2d 205 (the School cite case).

The facts here are not in significant dispute but are nonetheless complex.

Prior to 1907, the area that is now Long Beach was undeveloped. With a view toward its development, the Town of Hempstead conveyed the entire area to an entity called the Estates of Long Beach, reserving a right of way to the Ocean (Long Beach Road). This was done by metes and bounds and by a map showing the geographical area involved. There apparently were two maps generated at this time, one done in February 1907 and filed on April 18, 1907, and the other made in March 1907 and filed in 1911. The map filed in 1907 apparently was the map used for the conveyance and for a Mortgage given TG&T on July 1, 1907 (L 124 LP 482). The map filed in 1911 has a grid of streets and was a development map. Water Street on this map is a continuous through street running along the northerly border of the property.

On March 8, 1917, Estates of Long Beach sold to the Elmohar Company the property in issue "together with the right to use the surface of the street only. The ownership of which is not hereby conveyed and all franchise rights in the Streets are hereby reserved to the party of the first part" (Estates).

Prior to the formation of the City of Long Beach this mortgage was foreclosed. On April 16, 1921 the Referee deeded the property to Long Beach on the Ocean; this deed expressly included "...all the right title and interest of the Estates of Long Beach and all the parties in and to the Streets, Roads, Avenues, Boulevards, Paths and Lanes lying north of Park Street as shown on all said

maps." The deed refers to the March 1, 1907 (filed 1911) development map and other maps.

In 1925, there were two re-subdivision maps created, one moved Water Street for two blocks and the other eliminated Water Street from Neptune Boulevard east.

In 1941, Long Beach on the Ocean went bankrupt. The proceeding lasted for many years. On October 28, 1949, the trustee sold the relevant bed of Water Street in quitclaim language for \$2,000.00 to the Kaywood Realty Company, who by then owned the property conveyed to Elmohar. Defendants' succeed to Kaywood's interest.

The City of Long Beach, as I read its application, bases its claim here primarily on the map filed in 1911; the development map claiming it to be an offer of dedication. (See, Niagra Falls Suspension Bridge Company v. Bachman, 66 NY 261).

Water Street on the original subdivision map ran along Reynolds Channel the entire length of the island; "this plan" as Justice Hogan opined in the School Site case "never was carried out." Justice Hogan points out the various non-street uses that Water (Bay) Street was put to, including the Hospital building, homes with buildings or gardens on its bed, etc.. Here, there is uncontroverted evidence that for decades a fence or fences closed this part of the Street to all uses other than use among the defendants or their predecessors in title.

Justice Hogan also opined that the persons purchasing from a development map have a right to keep the Street they purchased the

lot on, open to the extent of providing access to the nearest Boulevard and to an easement in all Streets whose existence adds to the value of the property, citing, inter alia, Reis v. New York City, 188 NY 58; Williamson v. Salmon, 150 Misc. 485.

Certainly this never paved, never opened, closed for decades "Street," whose way has been more interrupted than through, does not qualify to add value to other Long Beach property.

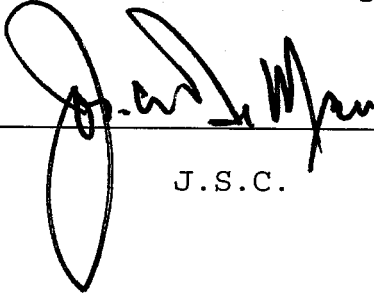
The map of 1911 was a design plan, carried out in large part by municipalities who paved streets for the purpose of providing all those things a street is designed to provide. No one ever treated much of Water Street in this manner.

The Court finds that the original 1907, filed 1911, grid street map, was a plan. That as the development of Long Beach ensued, the map for most of its area evolved into the dedication of streets as individuals purchased lots. Indeed it is clear that for the most part, Long Beach streets are paved and serviced and provide access to its residents and the public. Clearly, Water Street, as Justice Hogan opined, went in another direction. The overall plan for Water Street never evolved into the through street originally envisioned in the map. It was put to diverse uses and this part, like some others, never got to be used as a street by anyone other than the abutting land owners here, predecessors of defendants or defendants themselves. The original plan was long ago abandoned and never, as to this portion of Water Street (and diverse others), ripened into an unequivocal dedication.

Plaintiff's various applications are denied. As all defendants here are similarly situated the Court has searched the record and herewith grants summary judgment to all defendants. The Court herewith declares that each defendants own its deeded piece of Water Street subject only to an easement of way as may be necessary in favor of the other defendants.

The Court has been asked to impose costs in this matter against the municipal plaintiff. Such an imposition would of course impact the public fisc. The Court declines to impose such damages.

This constitutes the Order and Judgment of the Court.



A handwritten signature in black ink, appearing to be 'J.S.C.', is written over a horizontal line.

J.S.C.

Dated: August 28, 2003

ENTERED
SEP 02 2003
NASSAU COUNTY
COUNTY CLERK'S OFFICE