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Appellate Division Affirms Dismissal of Inverse Condemnation on Private Beach Claim

In the wake of Superstorm Sandy, the NJDEP, in collaboration with the United States Army Corps of Engineers, began eminent domain proceedings to take a strip of dunes on the New Jersey coastline as perpetual easements for publically funded shore protection purposes. The takings cases had been heavily litigated and the takings themselves had been upheld by the Appellate Division in the face of numerous legal challenges which were affirmed for example in *State v. North Beach 1003, LLC*, 451 N.J. Super. 214, 223 (App. Div. 2017) and *State by NJDEP v. 1 Howe Street Bay Head, LLC*, 463 N.J. Super. 312 (App. Div. 2020). In the case of one example, the NJDEP instituted eminent domain proceedings against the Bayhead Point Homeowners Association, Inc., which owns an unbuildable two and one-half acre lot along the Atlantic Ocean in Point Pleasant Beach. In connection with that eminent domain action, the Law Division entered an order permitting individual members of the homeowners association to have any of their claims for severance damages (compensation for the loss in value to the remainder not taken) adjudicated in that matter, including, *inter alia*, "the separate just compensation due to each of the respective [plaintiffs] by reason of the taking … of property of each … and any damages to their respective residential lots." Nevertheless, seven of twenty-two individual members of the Association filed a separate suit seeking compensation for inverse condemnation alleging the NJDEP had effected a partial taking of each of the plaintiffs' separate properties "without due process and without just compensation including the impairment of the use and enjoyment of each owner's residential lot." The plaintiffs reasoned that original condemnation resulted in an extinguishment of their beach easement rights for recreational purposes on the association's property "in, upon and across" the beach. The NJDEP moved to dismiss on the grounds that the Entire Controversy Doctrine barred the plaintiffs' claims because the Law Division had, in effect, permitted plaintiffs' intervention in the original condemnation action for the purposes of fully asserting whatever claims they might have for damages to their property rights. The Law Division granted the NJDEP's motion to dismiss on the grounds that plaintiffs' claims were barred by the entire controversy doctrine because the court had in effect permitted plaintiffs' intervention in the NJDEP's condemnation action "for the purposes of fully asserting" whatever claims they might have for damages to their easement rights and plaintiffs were, in fact, pursuing their claims in that action. The Law Division denied reconsideration of its ruling.

Plaintiffs appealed, and the Appellate Division in *Scaduto et al. v. State of New Jersey*, Docket No. A-3240-20 (January 12, 2023), affirmed. This decision is reported and is therefore precedential. The Appellate Division first and substantively addressed plaintiffs' claims as to the recreational easement rights. The court framed plaintiffs' argument on appeal as the NJDEP took from them their "separate recreational easement right to exclude members of the public from the [Association's] private beach," meaning the loss is the right to recreation on a private beach restricted to members of the Association. The NJDEP claimed that the plaintiffs' easement rights were non-exclusive, and the public always had a right to access the beach lot. The Appellate Division reviewed the language of the easement which it concluded made clear that plaintiffs' easements in the property were "non-exclusive." Even so, the Appellate Division went further, and examined whether allowing public access to the beach after completion of the project "unreasonably interfered with plaintiffs' rights or changed the character of plaintiffs' easements." The court concluded, among other things, that New Jersey's Public Trust Doctrine established "plaintiffs' easement rights were already subject to the public's negotiated right of access pursuant to the public trust doctrine and the Association's reserved right to provide public access to the beach lot prior to the [NJ]DEP's condemnation." Therefore, the Appellate Division held that it could not find that "the State's partial taking, including public access and use in the expanded beach lot, changed the character of plaintiffs' non-exclusive recreation easements by depriving them of 'the right to recreation on a private beach restricted to the Association,'" and therefore, plaintiffs' recreation easements did not

provide them the right to a private beach. The Appellate Division directed that plaintiffs are entitled to argue in the condemnation action that they are entitled to severance damages because the NJDEP's taking reduced the value of their homes by impairing the easements in the property, however, they "may not mislead the jury as to the extent of those easements prior to the taking." In that regard, the values before the taking must take into account, among other things, that plaintiffs' easement rights were already subject to the public's right of access pursuant to the Public Trust Doctrine, and whether allowing public access as part of the NJDEP's easement affected the fair market value of plaintiffs' properties.

If you have questions regarding this alert, please reach out to the authors or any of the attorneys listed on the sidebar.

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