

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D39514
C/nl

_____AD3d_____

Submitted - September 16, 2013

PETER B. SKELOS, J.P.
THOMAS A. DICKERSON
L. PRISCILLA HALL
ROBERT J. MILLER, JJ.

2012-03891

DECISION & ORDER

Lloyd Macklowe, et al., respondents, v Trustees of
Freeholders and Commonality of Town of East Hampton,
et al., appellants.

(Index No. 8740/08)

Anthony B. Tohill, P.C., Riverhead, N.Y., for appellants.

Esseks, Hefter & Angel, LLP, Riverhead, N.Y. (Anthony C. Pasca, Nancy Silverman,
and William P. Maloney of counsel), and Ackerman, O'Brien, Pachman & Brown,
LLP, East Hampton, N.Y. (Leonard Ackerman of counsel), for respondents (one brief
filed).

In an action pursuant to RPAPL article 15 to compel the determination of a claim to
real property, the defendants appeal, as limited by their brief, from so much of a judgment of the
Supreme Court, Suffolk County (Whelan, J.), entered April 16, 2012, as, upon a decision of the same
court dated March 2, 2012, made after a nonjury trial, is in favor of the plaintiffs and against them
declaring that the southern boundary of the plaintiffs' property is an ambulatory line defined by the
location of the average southerly line of beach grass on the beach of the Atlantic Ocean, and that the
defendants have no title to the lands lying north of such average southerly line of beach grass within
the east and west bounds of the plaintiffs' property.

ORDERED that the judgment is affirmed insofar as appealed from, with costs.

“On an appeal from a judgment after a nonjury trial, this Court's power to review the

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evidence is as broad as that of the trial court, and this Court may render the judgment it finds warranted by the facts, giving due regard to the trial court, which had the advantage of assessing the credibility of the witnesses” (*Rock v Rock*, 100 AD3d 614, 615-616; *see Northern Westchester Professional Park Assoc. v Town of Bedford*, 60 NY2d 492, 499; *Parry v Murphy*, 79 AD3d 713, 714-715). Here, the record supports the Supreme Court’s determination that the plaintiffs hold title to the disputed lands north of an ambulatory line defined by the location of the average southerly line of beach grass on the beach of the Atlantic Ocean (*see Trustees of Freeholders & Commonality of Town of Southampton v Buoninfante*, 303 AD2d 579, 580; *see also Matter of Common Council of City of Brooklyn*, 73 NY 179, 184; *Ryan v Boucher*, 144 AD2d 144, 145; *cf. Earl v Smithler*, 195 AD2d 969). Accordingly, we decline to disturb the Supreme Court’s determination.

SKELOS, J.P., DICKERSON, HALL and MILLER, JJ., concur.

ENTER:



Aprilanne Agostino
Clerk of the Court