

Short Form Order

SUPREME COURT - STATE OF NEW YORK
I.A.S. PART XXXVI SUFFOLK COUNTY

PRESENT:

HON. PAUL J. BAISLEY, JR., J.S.C.

-----X
THE TOWN OF EAST HAMPTON, NEW YORK,

Plaintiff,

-against-

THE SEAVIEW AT AMAGANSETT, LTD.,
DUNES AT NAPEAGUE PROPERTY OWNERS
ASSOCIATION, INC., THE TIDES
HOMEOWNERS ASSOCIATION, INC.,
WHALERS LANE HOMEOWNERS
ASSOCIATION, INC., THE OCEAN ESTATES
PROPERTY OWNERS ASSOCIATION, INC.,

Defendants.

-----X
TRUSTEES OF THE FREEHOLDERS AND
COMMONALTY OF THE TOWN OF EAST
HAMPTON, RICK DREW, DANIEL LESTER,
PAUL LESTER, ADAM MAMAY, BRIAN
PARDINI, JEFFREY KIEGER, MARK HALLOCK,
EDWARD MCCLOSKEY, NATHANIEL MILLER,
DONAL FINGLETON, ANDREW RIGBY, JAMES
BENNETT, individually, and on behalf of all others
similarly situated,

Plaintiffs,

-against-

SEAVIEW AT AMAGANSETT, LTD., DUNES AT
NAPEAGUE PROPERTY OWNERS
ASSOCIATIONS, INC., THE TIDES
HOMEOWNERS ASSOCIATION, INC.,
WHALERS LANE HOMEOWNERS
ASSOCIATION, INC., THE OCEAN ESTATES
PROPERTY OWNERS ASSOCIATION, INC.,

Defendants.

-----X

ORDER

ACTION 1:

INDEX NO.: 621830/2021
MOTION DATE: 03/17/2022
MOTION SEQ. NO.: 001-MG

MOTION DATE: 03/17/2022
MOTION SEQ. NO.: 002-MG

MOTION DATE: 04/21/2022
MOTION SEQ. NO.: 003-MG

PLAINTIFF'S ATTORNEYS:
WHITEMAN OSTERMAN & HANNA

DEFENDANT'S ATTORNEYS:
ESSEKS, HEFTER, ANGEL, DI TALIA &
PASCA, LLP

PILLSBURY WINTHROP SHAW
PITTMAN, LLP

ACTION 2:

INDEX NO.: 604939/2022
MOTION DATE: 06/09/2022
MOTION SEQ. NO.: 001-MG
MOTION SEQ. NO.: 002-MG
MOTION SEQ. NO.: 003-MG
MOTION SEQ. NO.: 004-MD

PLAINTIFF'S ATTORNEYS:
HODGSON RUSS, LLP

DEFENDANT'S ATTORNEYS:
ESSEKS, HEFTER, ANGEL, DI TALIA &
PASCA, LLP

PILLSBURY WINTHROP SHAW
PITTMAN, LLP

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Index No. 604939/22*

ORDERED that the defendant The Ocean Estates property Owners Association, Inc.’s motion (003) to consolidate actions pending under Index Nos. 621830/2021 and 604939/2022, and enjoining plaintiffs from any filing relating to this matter without court approval, and defendant The Ocean Estates Property Owners Association, Inc.’s motion (001) to dismiss plaintiff’s complaint pursuant to CPLR § 3211(a)(5), and awarding costs and sanctions and defendants The Seaview at Amagansett, Ltd., Dunes at Napeague Property Owners Association, Inc., and The Tides Homeowners Association, Inc. and Whalers Lane Homeowners Association, Inc.’s motion (002) to dismiss the plaintiff’s complaint pursuant to CPLR § 3211(a)(7) and CPLR § 3211(a)(3), or alternatively, pursuant to CPLR § 3211(a)(5), and defendant Ocean Estates Property Owners Association, Inc.’s motion (004) to strike the affirmation of Richard Whalen and any part of plaintiffs’ opposition to defendant’s motion to dismiss that relies upon it, are consolidated for the purposes of this determination, and as so consolidated, it is further

ORDERED that the motion to consolidate Actions 1 and 2 is hereby granted. Accordingly, the action shall proceed under Index No. 621830/2021. The Suffolk County Clerk is directed to close Index No. 604939/2022.

The action shall read and proceed under the following, corrected caption:

-----X
TRUSTEES OF THE FREEHOLDERS AND
COMMONALTY OF THE TOWN OF EAST HAMPTON,

and

RICK DREW, DANIEL LESTER, PAUL LESTER,
ADAM MAMAY, BRIAN PARDINIG, JEFFREY KIEGER,
MARK HALLOCK, EDWARD MCCLOSKEY, NATHANIEL
MILLER, DONAL FINGLETON, ANDREW RIGBY, AND
JAMES BENNETT, individually, and on behalf of all others
similarly situated,

and

THE TOWN OF EAST HAMPTON, NEW YORK,

Index No.: 621830/2021

Plaintiffs,

-against-

THE SEAVIEW AT AMAGANSETT, LTD., DUNES
AT NAPEAGUE PROPERTY OWNERS ASSOCIATION,
INC., THE TIDES HOMEOWNERS ASSOCIATION, INC.,
WHALERS LANE HOMEOWNERS ASSOCIATION, INC.,
and THE OCEAN ESTATES PROPERTY OWNERS ASSOCIATION, INC.

Defendants.
-----X

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It is further **ORDERED** that notice pursuant to CPLR 8019(c) along with a certified copy of the order be served on the County Clerk rather than a copy with Notice of Entry; and it is further

ORDERED that the Clerk of the Court is directed to amend the caption consistent with this decision; and it is further

ORDERED that the defendants' motions to dismiss are granted; and it is further

ORDERED that the parties are enjoined from any further filing regarding the scope of the reservation in the Benson deed without prior court approval; and it is further

ORDERED that defendant Ocean Estates Property Owners Association, Inc.'s motion to strike the affirmation of Richard Whalen is denied as moot.

This protracted litigation arises out of the ownership and use of land located in the Town of East Hampton which spans approximately 4,000 feet of oceanfront property. In the matter of *The Seaview at Amagansett, Ltd., Dunes at Napeague Property Owners Association, Inc., The Tides Homeowners Association Inc., Whalers Lane Homeowners Association Inc., the Ocean Estates Property Owners Association, Inc., Robert Higgins, Marc Helie, Robert Cristofaro and Robert Cooperman v. Trustees of the Freeholders and Commonalty of the Town of East Hampton, the Town of East Hampton, Jay H. Baler and Pat Good Baker Joint Trust, David Stuart Tyson, Stephanie Bitterman, June Merton, Napeague Associates, David Ross, Grace Ross, Irving C. Marcus and Harriet Marcus*, Index No. 034714/2009, the Appellate Division, Second Department issued a decision on February 3, 2021 which held in part that "the reservation [in the Benson Deed] is in the nature of an easement allowing the public to use the homeowners associations' portion of the beach only for fishing and fishing-related purposes." The decision further held that, "the reservation does not confer upon the Town and Trustees lawful governmental or regulatory power to issue permits allowing members of the public to operate and park vehicles on any portion of the beach owned by the homeowners associations." On April 12, 2021, this court (BAISLEY, J.) signed a judgment in accordance with the Appellate Division decision. Thereafter, Plaintiffs moved for an order holding the defendants in civil contempt for violating the injunction of the Appellate Division, as well as this Court's modified judgment which enjoined the defendants from issuing "permits purporting to authorize their holders to operate and park vehicles" on any portion of the beach owned by the Homeowners Associations; and directing the defendants to purge their contempt by complying with the injunction by revoking any and all permits issued by the Town for the 2021 season that do not expressly prohibit driving or parking on the beach. A contempt hearing was conducted on January 26, January 27, and February 10, 2022. By order dated June 30, 2022 this court (BAISLEY, J.) found the defendants guilty of civil and criminal contempt.

On March 17, 2022 plaintiffs Trustees of the Freeholders and Commonalty of the Town of East Hampton, and Rick Drew, Daniel Lester, Paul Lester, Adam Mamay, Brian Pardini, Jeffrey Kieger, Mark Hallock, Edward McClosky, Nathaniel Miller, Donal Fingleton, Andrew Rigby, and James Bennett, individually, and on behalf of all other similarly situated ("The Trustees"), instituted the action (Index No. 604939/2022) seeking, *inter alia*, a declaratory judgment to quiet title by determining that plaintiffs have the right to use the beach for fishing and fishing-related activities

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which includes the right to use vehicles on the beach; declaring that plaintiffs have obtained by prescriptive easement the right to use the beach for fishing and fishing-related activities, including the right to use vehicles on the beach; declaring the defendants should be estopped from asserting control over the beach in a manner that is adverse and hostile to plaintiffs' use of the beach. On November 19, 2021, plaintiff the Town of East Hampton, New York ("The Town") instituted the action (Index No. 621830/2021) seeking, *inter alia*, to quiet title pursuant to RPAPL Article 15 and a declaratory judgment to determine the scope of the public's right to use a portion of the East Hampton beach for fishing and fishing-related purposes.

Defendants now move to consolidate the matters and move to dismiss pursuant to CPLR § 3211(a)(5), CPLR § 3211(a)(7) and CPLR § 3211(a)(3), or alternatively, pursuant to CPLR § 3211(a)(5).

"The power to order consolidation rests in the sound discretion of the court and should be granted in the interest of judicial economy where common issues of law or fact exist" (*Sachem Cent. School Dist.*, 309 AD2d 917, 917 [2d Dept 2003]; CPLR 602[a]). Here, the Town action and Trustee actions clearly involve common issues of law and fact. Specifically, the Town action and the Trustee action share common questions relating to the scope of the Reservation in the Benson deed and joining the matters would result in judicial economy. Therefore, the motion to consolidate is granted.

Turning to the defendants' motions to dismiss, defendants contend that the Town and Trustees claims are barred by the doctrines of res judicata and collateral estoppel. Specifically, defendants assert the Town and Trustees seek to relitigate the very same issues resolved by the 2009 action, *to wit*, the parties' rights under the Benson Deed and the rights of the general public to access the Beach.

On a motion to dismiss pursuant to CPLR § 3211(a)(5), the Court must accept the facts alleged in the complaint to be true and accord plaintiff the benefit of favorable inferences (*Jacobson Development Group, LLC v. Grossman*, 198 AD3d 956, 156 NYS3d 363 [2nd Dept. 2021]). Under the doctrine of "res judicata, or claim preclusion, a valid final judgment bars future actions between the same parties on the same cause of action" (*Simmons v. Trans Express Inc.*, 37 NY3d 107, 111, 170 NE3d 733, 148 NYS3d 178 [2021], quoting *Parker v. Blauvelt Volunteer Fire Co.*, 93 NY2d 343, 347 [1999]). Moreover, the "claim preclusion rule extends beyond attempts to relitigate identical claims...such that 'once a claim is brought to a final conclusion, all other claims arising out of the same transaction or series of transactions are barred, even if based upon different theories or if seeking a different remedy' " (*Simmons, supra*, at 111). "Collateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party...whether or not the tribunals or cause of action are the same' " (*Parker v. Blauvelt Volunteer Fire Company, Inc.*, 93 NY2d 343, 349, 712 NE2d 647, 690 NYS2d 478 [1999]). A review of the pleadings in these matters reveals that the Town and Trustees are in fact attempting to relitigate the very same issues that have been litigated in the 2009 matter for thirteen years. Under the doctrine of res judicata, the Town and Trustees may not institute a new action in order to circumvent an unfavorable decision it received in a previous matter (*Myers v. Meyers*, 121 AD3d 762, 993 NYS2d 729 [2nd Dept. 2014]). The court finds the plaintiffs' application of *parens patriae* to be without merit.

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With respect to defendants' application for a filing injunction, it is warranted where a plaintiff seeks to relitigate issues that have already been decided (*Duffy v. Holt-Harris*, 260 AD2d 595, 687 NYS2d 265 [2nd Dept 1999]).

The foregoing constitutes the order of the court.

Dated: *March 9,* 2023



J.S.C.

HON. PAUL J. BAISLEY, JR.