JERSEY SHORE BEACH AND BOARDWALK COMPANY, INC., a/k/a JERSEY SHORE BEACH & BOARDWALK INC.	: SUPERIOR COURT OF NEW JERSEY : APPELLATE DIVISION : DOCKET NO. A-621-23 :
Plaintiff/Appellant	: On Appeal from Orders dated : May 11, 2020, and September 25, 2023 :
vs.	: Superior Court of New Jersey : Law Division-Monmouth County : Docket No. MON-C-48-19
BOROUGH OF KEANSBURG a Municipal Corporation	:
Defendant/Respondent	: SAT BELOW: : Hon. Katie A. Gummer, P.J., Ch. : Hon. Joseph P. Quinn, P.J. Ch. :

AMENDED BRIEF OF PLAINTIFF/APPELLANT JERSEY SHORE BEACH AND BOARDWALK COMPANY, INC., a/k/a JERSEY SHORE BEACH & BOARDWALK INC.

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Dated: April 16, 2024

JERSEY SHORE BEACH AND BOARDWALK, INC.
A/K/A JERSEY SHORE BEACH & BOARDWALK, INC.
VS.
BOROUGH OF KEANSBURG, A MUNICIPAL CORPORATION
DOCKET NO. A-621-23

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[1] Please note the May 8, 2020, Transcript of Motion in Limine before the Honorable Katie A. Gummer, P.J.Ch. is out of chronological order.

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[2] Please note many of the Exhibits in the Appendix are old Deeds/Maps which are difficult to read and Appellant provided the best images possible.

PROCEDURAL HISTORY

On April 22, 2019, Plaintiff/Appellant, Jersey Shore Beach & Boardwalk, Inc. ("Jersey Shore") filed a Three Count Complaint against Defendant/Respondent, Borough of Keansburg ("Keansburg") seeking a Declaratory Judgment and Quieting Title in their favor to the exclusion of Defendant Keansburg in all of the subject property (Lot 3 and/or Lot 3.01 as shown on Pa19) except for the limited portion of Lot: 3 which Keansburg took title to by virtue of an October 23, 1939 Final Judgment in Tax Foreclosure **(Pa10, 203)**. Jersey Shore also sought a declaration that Keansburg illegally collected rent payments as they did not own any portion of Lot: 3.01 (the property that was the subject of leases) as well as Judgment against Keansburg for the entirety of all rent payments paid to date (with prejudgment interest) **(Pa13)**. Jersey Shore alternatively sought damages for any costs that may be incurred by Jersey Shore if they ultimately have to move any of the substantial improvements made on the subject property rented **(Pa14)**. Keansburg filed an Answer, Separates Defenses and Third-Party Complaint against the long defunct Keansburg Heights Company on July 8, 2019 **(Pa22)**. Keansburg asserted ownership of the Subject Property from Keansburg Heights Company by adverse possession and seeking to quiet title. A Case Management Order was filed on August 21, 2019 **(Pa41)**. The Borough filed Request to Enter Default against Third Party Defendant, Keansburg Heights Company on October 17, 2019 **(Pa43)**. An Amended Case

Management Order was filed on April 3, 2020 **(Pa71)**. Plaintiff filed a Notice of Motion in Limine to bar the defense expert report of Edward Eastman on April 6, 2020 **(Pa77)**. The Honorable Katie A. Gummer, P.J.Ch. heard oral argument on May 8, 2020, and entered an Order Denying the Motion on May 11, 2020 **(Pa131)**. A Consent Order of Dismissal Without Prejudice was executed by Judge Gummer on May 21, 2020, while the parties attempted settlement **(Pa73)**. On September 1, 2020, Keansburg filed a Notice of Motion to Reinstate Defendant/Third Party Plaintiff Borough of Keansburg claims and a Request for a Case Management Conference **(Pa138)**. On November 4, 2020, the Honorable Joseph P. Quinn, P.J.Ch. entered an Order Reinstating Keansburg's claim **(Pa145)**. On December 2, 2020, Judge Quinn entered a Case Management Order **(Pa147)**. A bench trial was held before Judge Quinn on seven non-consecutive dates starting on November 3, 2021, and concluding on April 25, 2023 **(1T-7T)**. On September 5, 2023, Judge Quinn entered an Order dismissing Plaintiff's Complaint, and placed the decision on the record **(9T, Pa1088)**. On October 20, 2023, Plaintiff/Appellant filed a Notice of Appeal of the May 11, 2020, Order of Judge Gummer as well as the Order of Dismissal entered by Judge Quinn on September 25, 2023 **(Pa1072)**. Keansburg filed a Civil Case Information Statement on November 2, 2023 **(Pa1077)**.

STATEMENT OF FACTS

Jersey Shore Beach is the owner of properties located in the Borough of Keansburg, including but not limited to Block 184, Lot 4, as well as to the property which is the subject matter of this litigation - the "Riparian Grant." Jersey Shore has been in business on properties located in Keansburg for approximately 100 years, operating a recreation/amusement facility generally known as the "Keansburg Amusement Park." Prior to 1998/1999, the Borough represented and held out to the public that Keansburg was the fee owner of certain property known as Lots 3 and 3.01 in Block 184, located in the immediate vicinity of Jersey Shore's property upon which it operates its business. Keansburg represented that it possessed fee title to Lots 3 and 3.01, offering to lease Lot 3.01 to the public. This is the "Riparian Grant, a.k.a. the "Quinlin Grant." Shortly thereafter, on May 17, 1999, Jersey Shore entered into a Lease Agreement with the Borough whereby Plaintiff leased and occupied a portion of Lot 3, Block 184 --- said portion now known and identified as Lot 3.01(hereinafter referred to as "Subject Property") (J-12) **(Pa969)**. The Borough and its officials were aware that Jersey Shore planned to install and locate various amusement park facilities and structures, including a "Go-Kart" track facility, on the Subject Property. The improvement, installed by Plaintiff, is valued in excess of several hundred thousand dollars. The "Go-Kart", along with the "Water Slide" is a main attraction – bringing tens of thousands of visitors from throughout the Tri-State

area every year. The 1999 Lease provided for an initial Lease term to May 16, 2005, and then an option of four (4) renewal terms each through May 2025 at a specified rate schedule. In reliance upon said 1999 Lease, Jersey Shore incorporated the "Subject Property" into the amusement park and expended substantial sums of money to construct and locate various amusement facilities thereupon, including the "Go-Kart" track. In 2011, certain issues and/or disputes arose between the parties regarding the continuation and renewability of Jersey Shore's Lease for the Subject Property. The parties eventually agreed on terms of an Amended Lease which was executed on February 20, 2012, for the continued Lease of Lot 3.01 (J-19) (Pa1027).

In 2015, the Keansburg, by virtue of Resolution 15-026, authorized the Keansburg Planning Board to undertake a Preliminary Investigation to determine whether certain conditions exist to designate various properties located within the borough of Keansburg, consisting of Block 184, Lots 1 & 3 as a condemnation redevelopment area. This included Lot 3.01. The Study resulted in a Report titled "Redevelopment Study and Preliminary Investigation Report" dated June 2015 that concluded that the Area studied, being Block 184, Lots 1 & 3 met the criteria to be designated on "Area in Need of Redevelopment" **(Pa4)**. As to the Subject Property, rented to Jersey Shore, the Borough determined it did not meet any of the criteria for development but was necessary for development of the study area. Thereafter, the Defendant Borough adopted Resolution 107 accepting the Study Report and

declaring the area (Lots 1 & 3, inclusive of 3.01) as an "Area in Need of Redevelopment" as per the LRHL **(Pa5)**.

The Borough Consultant then prepared an "Amendment to the Beachway Avenue Waterfront Redevelopment Plan" encompassing the Study Area of Lots 1 and 3, including 3.01. That "Amendment" proposed locating six (6) multi-story apartment buildings on Lots 1 and 3, with a Municipal parking area on Lot 3.01. This parking area of approximately 125 cars would replace the entire lot – located on State owned property – of over 500 spaces **(Pa6)**. The Keansburg Planning Board found the "Amendment" consistent with the Master Plan. On March 20, 2016, the Governing Body adopted Ordinance 1579 that approved the 2016 "Beachway Avenue Waterfront Redevelopment Plan Amendment." During the above process, the Jersey Shore initiated a lawsuits challenging the Planning Board action in adopting Resolution 107 and then initiated a second lawsuit challenging the Borough Ordinance 1579 approving the Redevelopment Plan Amendment. At some point in that process, the Borough through its officials advised Jersey Shore of an intention to terminate and/or not renew its Lease on Lot 3.01 based upon the Borough's pursuit and adoption of the Redevelopment Plan Amendment. Thereafter, various "settlement" discussions ensued during late 2016 and early 2017 between Jersey Shore and the Borough and/or their representatives. Eventually, Jersey Shore allowed its lawsuits to be withdrawn and dismissed; the Borough Planning Board

rescinded Resolution 2016-04, and the Borough repealed Ordinance 1579. However, the Borough thereafter on June 21, 2017, adopted Ordinance 1600. This Ordinance approved a new "Amendment to the Beachway Avenue Waterfront Redevelopment Plan" so as to establish an overlay zone on Lots 1 & 3 allowing multi-story residential development. Lot 3.01 would be utilized as a parking area. Jersey Shore would be evicted, and its improvement and business removed. The fundamental basis and premise of this "Amendment" and Redevelopment Plan is that the Borough was the fee owner of the entire Lot 3.01 - the "Subject Property."

The Borough provided notification and filed an Eviction Action, premised upon the Redevelopment Plan Amendment being validly in place, seeking to terminate Jersey Shore's Lease and occupancy of the Subject Property. Besides its leasehold interests, the Plaintiff Jersey Shore is the fee owner of other real property in the immediate vicinity of Lot 3.01, which will also be adversely impacted by the adopted Redevelopment Plan Amendment. The Redevelopment Plan called for the removal of the Municipal parking lot on State owned property, to be replaced by six (6) multistory residential apartments. After the adoption of Ordinance 1600 in June 2017 approving the new Redevelopment Plan Amendment, Jersey Shore filed a Complaint entitled Jersey Shore Beach and Boardwalk Company, Inc. v. Borough of Keansburg, et al., Docket No. MON-L-2629-17. That Complaint asserts that the approval and adoption of Ordinance 1600 and the Redevelopment Plan thereunder

by the Defendant Borough is invalid for a number of procedural and substantive reasons as per the LRHL. Thereafter, the Defendant Borough re-filed an Eviction Action against Plaintiff, seeking to terminate Plaintiff's occupancy and use of Lot 3.01. That Eviction Action (Borough of Keansburg v. Jersey Shore Beach and Boardwalk Company, Inc. Docket No. MON-L-1166-18) was consolidated with Docket No. MON-L-2629-17. The matters are currently stayed in the Law Division pending the resolution of this appeal. Jersey Shore, fighting for its economic survival, engaged various title researchers and experts to investigate and ascertain the various title rights and interests in Lot 3 and 3.01 as part of its investigation and research in those pending lawsuits. As a consequence of research by forensic title experts George Piccola, (Piccola) and Richard Venino, Esq., (Venino) Jersey Shore obtained title information and details demonstrating that although both Lot 3 and the Subject Property, Lot 3.01, are and have been listed on Borough Tax records for many years as owned by the Borough, the Borough did not actually own the substantial majority of Lot 3 (or any portion of Lot 3.01). The Borough only owned a small portion of said parcel as depicted in various maps, tax maps and survey **(Pa900)**.

The Borough's ownership claim to said parcel was premised upon a Final Decree in a Tax Foreclosure Action in the matter of Borough of Keansburg v. P. Licari, Inc. Superior Court Chancery Division dated October 23, 1939 and recorded

on October 25, 1939 in Deed Book 1806 Page 403. That Judgment describes four tracts of land, being conveyed/acquired by the Borough **(J-7) (Pa927)**. The description of the property being foreclosed by Keansburg in 1939 did not specify or include all of the parcel/property represented as Lot 3 and 3.01 on the Keansburg Tax Map **(J-1) (Pa900, 93)**. The description only included a thin strip of land located immediately North of Beachway and South of the 1918 Mean High Water Line as depicted on the Tax Map. Thus, rather than possessing the entirety of Block 184, Lots 3 & 3.01, the Borough only acquired two (2) de minimis strips of land running North of Ocean Road **(J-1) (Pa900).** A review of Title documents discloses the following:

(a) Prior to 1900, title to the upland portion of Lot 3 was owned by William Quinlan. In 1879, Quinlan acquired fee simple title to the Riparian lands (now known as Lot 3.01) by Riparian Grant from the State.

(b) In 1909 William Quinlan Jr. conveyed all the lands as shown on a certain Map entitled "Map of Keansburg Heights" filed in the Monmouth County Clerk's Office to Keansburg Heights Company. That conveyance included all the Riparian rights owned by Quinlan; thus, conveying Lot 3.01 to Keansburg Heights Company. This included a Riparian Grant, still shown on the Keansburg Tax Map, describing it as land lying beneath the water (J-3) (Pa917). The Grant was conveyed as land lying under the water. This Riparian Grant is uncontested.

(c) In 1920, Keansburg Heights Company conveyed many of the lots shown on the "Map of Keansburg Heights" including property on said Map marked beach to Peter Licari by Deed dated April 8, 1920, **(J-5) (Pa923)**. **That Deed did not convey the Riparian grant**

acquired by Keansburg Heights Company, being the substantial majority of area of Lot 3.01.

(d) Peter Licari conveyed the property acquired in 1920 from Keansburg Heights Company to P. Licari Inc. by Deed dated June 18, 1920, and recorded. No Riparian Grant was conveyed because Keansburg Heights never conveyed its Riparian Grant to P. Licari, Inc. (J-6, Pa925)

(e) In 1939, the Defendant Borough filed a Foreclosure Action against P. Licari Inc. However, the Foreclosure Action failed to name or reference Keansburg Heights Company as a named Defendant for its property, being the Riparian grant area now known as Lot 3.01 (other than the small strip as shown on **J-1**). Although the 1939 Final Decree does reference "Together with all Riparian right adjoining the above-described premises," ***Licari did not acquire the Riparian Grant area from Keansburg Heights Company and thus that grant was not Licari's to be foreclosed*** **(J-7, Pa923) (Pa927).**

(f) As a consequence, Keansburg Borough did not acquire title by the 1939 Foreclosure Decree to the substantial majority of Lot 3 (or 3.01). The Borough only acquired title to the slim strip of land as shown on the tax map as still shown today.

(g) Keansburg Borough does not own title to Lot 3.01. It remained vested in Keansburg Heights Company until recently being conveyed to Jersey Shore. Keansburg Borough is only possessed of the small strip of land between the Beachway and the 1918MHWL depicted in Yellow (Pa9203

(h) Exhibit P-1 shows the current status of ownership of the Subject property – 3.01 "Jersey Shore" is in fact the majority owner of 3.01.

Keansburg Heights Company was the grantee from Quinlan. Jersey Shore ultimately purchased the Riparian Grant and all property rights from the heirs of the

Keansburg Heights Company, filed all Quitclaim Deeds, and argued to the Trial Court that today it is the lawful owner of record of the subject property. Keansburg maintained that they have title to the entirety of the subject property.

The parties engaged in discovery in the normal course. Each side retained expert witnesses in the field of Property Title. Despite the volumes of documentary evidence (including Deeds and Maps), most of which were drafted and filed of record with the government well over 100 years ago, this case was ultimately reduced to title expert assessment of these old Maps and Deeds on file to determine whether Keansburg ever actually took or acquired legal title to the subject property in the October 23, 1939, Foreclosure Decree. Jersey Shore maintained that if Keansburg never took title to the subject property, then Jersey Shore is entitled to a Court Declaration Quieting Title in their favor and monetary damages. The ensuing Trial and litigated whether in 1939 when Keansburg took title to the subject property by Sheriff's Deed whether the Deed conveyed to them legal title to the (then) dry land only, or to BOTH the (then) dry land *and the riparian grant at issue*.

Trial commenced before Judge Quinn on November 3, 2021 **(1T)**. Jersey Shore introduced testimony from its two expert land title witnesses, Venino and Piccola, as well as Melissa Johnson, a genealogist. Venino testified that a Planning Analysis **(J-20, Pa1033, 1057)** prepared by Maser Consulting, confirms that the mean high-water line in 1918 was coterminous **(1T39:7-25)**. His testimony

confirms the Quinlin acquisition (Quinlan Grant) was in 1879. The southerly terminus of the Riparian Grant and what is shown as the mean high-water line of 1918 have the same boundaries and are coterminous **(1T39:18) (Pa669)**. In 1964, after the Quinlin transaction took place and long after the Borough of Keansburg foreclosed on the property in question in 1939, it is also shown as the mean high-water line in 1980, which is shown as a blue/purple line. In 1964, the mean high-water line is shown in red **(1T39:21)**. Pa201 shows the Borough Tax Map with the three identifications of the mean high-water line. The dashed line along the bottom coincides with the 1918 determination of the mean high-water line. The heavier line is also consistent with the 1964 determination of the mean high-water line and identified as a flood plain. There is also a mean high-water line depicted by another dash line which coincides with the 1980 determination of that line **(1T40:16-24) (Pa911).** shows the application when Quinlin acquired a Riparian Grant from the State of New Jersey. The Grant shows the lands which were granted to Quinlin. This description coincides with what is shown on the Tax Map of the Borough of Keansburg dated 1980 **(Pa201) (1T41:20)**. May 10, 1879, Liber E. Page 82 contains the description of the Quinlin Grant with a width of 330 feet and a depth of 2,280 feet. This is identified as a Grant made to William J. Quinlin reflected on the Tax Map **(1T42:16-43:8) (Pa669).** There is no other map produced by Keansburg or otherwise which reflects ownership in the Riparian Grant area other than ownership

to Quinlin **(1T44:6-11)**. He further confirms that in 1935, when Keansburg alleges that it acquired title to this property through a foreclosure proceeding, it should have been part of a parcel larger tract and given a Lot and Block number **(1T45:4)**. Venino testifies that Quinlin was the first and only grantee to acquire title from the State for the Riparian lands. **(1T45:25)**. He explains the difference between Riparian Grants and Riparian Rights which is set forth in the decision Panetta v. Equity One, Inc., 190 N.J. 307 (2007):

> "They are distinct. One is the real property, the corporeal element, as opposed to an element incorporeal element which is rights to access waters rather than ownership of the subaqueous lands under the water." (1T47:20)

Venino points out that there are other Riparian interests that can be conveyed by the State, such as making a lease or providing a license; or it can convey its ownership, which is the Grant **(1T48:12)**. In this case, the State conveyed to Quinlin the property which is shown on the Tax Map and is also reflected in the Deed from the State to Quinlin **(1T48:18)**. The Riparian Rights would inure to the benefit of the upland owner, to have access to the waters. He confirms that Jersey Shore is not questioning the fact that the upland owner, whether it was Quinlin or Licari and now Keansburg, has a Riparian Right. This just means that they have the right to have access to the water, they are entitled to "reasonable access" **(1T49:1-16)**.

He points out that even prior to the Panetta decision, a Riparian Right was not synonymous with a Riparian Grant, and they do not have the same legal effect,

referring to Hatterson v. East Jersey Water Co. 74 N.J. Eq. 49 (Chancery Div. 1908). He quotes from Page 39 of the Hatterson case:

> "Riparian Rights strictly and technically are so called are rights not originating in Grants but arises by operation of law and are called natural rights because they arise by reason of the ownership of the lands upon or along streams or water which are furnished by nature. And the lands to which these natural rights are attached are in law Riparian lands."

Venino confirms that in 1908, prior to the conveyances that he had just discussed, everyone certainly understood the distinction between Riparian lands and Riparian Rights **(1T52:25)**. He points out Quinlin acquired a Riparian Grant; when Quinlin transferred title to Keansburg Heights, he also conveyed the Riparian Grant. If Quinlin did not convey the Riparian Grant to Keansburg Heights, then Quinlin would still hold the Riparian Grant **(1T53:16)**. He points out the Borough's expert, Edward Eastman, Esq. ("Eastman") provided a report but does not accurately describe the conveyance from Quinlin to Keansburg Heights **(1T53:23)**. The Quinlin Deed to Keansburg Heights, Co., **(Pa917)** was made January 15, 1909, by William J. Quinlin, Jr., and his wife to the Keansburg Heights Company. It specifically describes land. There is also included language "together with such Riparian Rights and other rights, privileges and franchises in and to the land lying under the waters of Raritan Bay in front of and adjoining the above-described premises". Venino opines that the Deed from Quinlan to Keansburg Heights

Company specifically includes not only upland but the subaqueous land as well. **(1T55:2)** Subsequent to that conveyance, there is a Deed from Keansburg Heights Company to Licari. **(J-5) (Pa923)**. Venino points out that if the Court is to accept the theory of Keansburg with regard to the Quinlan to Keansburg Heights Company Deed, that Quinlan did not convey the subaqueous lands to Keansburg Heights, then in attempting to perfect their foreclosure the Brought would have had to name Quinlan. **(1T55:18)**. He notes the mean high-water line in 1909 was more than likely the mean high-water line that was shown on the Map of 1918 pursuant to the filed Map of Keansburg Heights Company which shows where it interpreted the mean high-water line to exist as set forth at J-4 **(Pa922) (1T56:16)**.

He discusses a Joint Exhibit, J-4/P-6 **(Pa206)** which is a blowup of the Map of Keansburg Heights **(1T57:1-8).** P-6 is an additional Map of Keansburg Heights, and it includes land to the south of what is shown on the 1909 Map **(Pa207)**. This shows additional lands that are not relevant to any of the bay front properties. However, the Map shows the mean high-water line of the Raritan Bay. If one looks at the 1909 Map and the Tax Map showing the mean high-water line in 1918, Venino opines that the mean high-water line from 1909 and the 1918 Tax Map are roughly the same **(1T58:1)**. Venino confirms that in the conveyance from Keansburg Heights to Licari, Keansburg Heights does <u>not</u> include each and every parcel of land they owned in Keansburg **(1T58:9)**. He points out that the conveyance by the Keansburg

Heights Company to Licari only described properties referenced to the filed Map, it does not include any land outside of the filed Map and the Riparian Grant is not on the filed Map **(1T58:14-19)**. In addition to that, there were lots shown on the filed Map that were conveyed to Licari as well prior sales which were excluded **(1T58:24)**. The Court asks if by 1910 Quinlan has no grant and no right to which Venino responds: "That is correct, Your Honor" **(1T59:10)**. Venino testifies that when Keansburg Heights Company acquired title by a Deed from Quinlan, they owned the Riparian Grant that went out "X thousand feet into the bay" **(1T59:18)**. Keansburg Heights then made this conveyance to Licari individually and subsequently Licari conveyed to Licari, Inc. **(Pa923) (1T59:20-25)**. Clearly, in the Deed to Quinlan, Quinlan acquired a Riparian Grant and there is reference in the Deed from the State identifying this as a grant; in the Deed from Quinlan to Keansburg Heights Company, there are two paragraphs which indicate that all of the upland lands were being conveyed (1T60:13). There is also a paragraph in the Deed wherein Quinlan specifically states he is conveying the lands underwater **(1T60:18) (Pa917)**. The second page of that Deed shows a second paragraph including a very specific description which refers to the uplands **(1T60:25).** It is a conveyance of 26.75 acres. The next paragraph reads as follows:

> "Together with such Riparian Rights and other rights, privileges and franchises in and unto the lands lying under the waters of the Raritan Bay in front of the adjoining described premises as are now vested in the party of the first part, which is Quinlan."

Venino confirms that this description in the Deed identifies the Grantee, as well as the land underwater and it refers to it being vested in the party Quinlan **(1T61:25)**. The Deed does not have to have a metes and bounds description. It can use Deed recitals or a method of describing the property that is being conveyed and that is certainly broad enough **(1T62:8)**. There is nothing in the Deed from Keansburg Heights Company to Peter Licari that would indicate in the written document that they were conveying that Riparian Grant or lands under water **(1T63:13)**. In the description of the second paragraph of the Deed entirely different from the language in the Deed by which Keansburg Heights Company took title **(1T63:23)**. There is nothing in that description referring to "Riparian Grant" or "lands under water" **(1T64:11).** There is nothing in this document to interpret that Peter Licari acquired a Riparian grant or the lands under water; he only acquired the upland: "No, the only thing that Mr. Licari acquired were the properties specifically described in the grant of the Deed" **(1T54:9) (Pa925).** In the second paragraph **(Pa25)** there is reference to a certain map of Keansburg Heights made by Frank Osborn, Surveyor dated June 9, 1909, and filed in the Office of the Clerk. The 1909 filed Map is referenced in the conveyance to Licari **(1T64:25)**. There is a reference to the land being conveyed; there is nothing on the Map which is incorporated into the Deed and referred to in the Deed which would in any way show on the Map that the intent of the parties was to convey a Riparian Grant **(1T65:4-11)**. The Map reflects a number of lots #18

though #35 which is part of the upland on the southerly side of Ocean Avenue. On the northerly side of Ocean Avenue is beach **(1T65:21)**. Venino testifies that the beach was specifically included in the Deed to Licari **(1T66:2)**. However, there is nothing on the Map which reflects that the conveyance was intended to include the Riparian Grant **(1T66:17)**. When asked if they would have shown this on the Map of Keansburg Heights, Mr. Venino responds "They could have or they could have separately described the grant, which they did not" **(1T66:22)**.

He testifies that the attorney for Licari in acquiring this property should have referenced that grant in the Deed of Conveyance **(1T67:3)**. Subsequent to this conveyance, there was a Tax Sale Foreclosure. There is a subsequent Deed from Licari individually to Licari, Inc. but there is no reference to a Riparian Grant in that Deed from Licari (individually) to Licari, Inc. This because Licari did not have title to the Riparian Grant **(1T67:25)**. If the Municipality were to bring this foreclosure proceeding, he believes that if Licari had acquired the Riparian Grant then the Borough would have to name Licari individually. **(1T68:12)**. There are in effect, three chains of title before Licari, Inc. who were actually named in the foreclosure proceeding: Quinlan, Keansburg Heights Company and Licari, individually **(1T68:12)**. When Licari, Inc. acquired the upland property – which was the only land that was conveyed to him, there came a point in time where he did not pay his taxes and there was a tax foreclosure (1T69:3-10). In 1929, the town sold the lien

on Peter Licari, Inc.'s property and it purchased the lien **(1T69:15-19)**. This is set forth in a Joint Exhibit **(Pa927)** which contains a number of different attachments, including a Tax Sale Certificate made by R.G. Williams, Collector to Borough of Keansburg **(1T70:10-14)**. He opines that the foreclosure documents show Keansburg only acquired Riparian rights in the Tax Sale Certificate foreclosure. The only party named as a defendant in the foreclosure is P. Licari, Inc., who would have been the owner of the property pursuant to the Deed from Peter Licari, individually. Venino points out that the Tax Sale Certificates is the predicate of foreclosure. There are two Tax Sale Certificates both made by the Tax Collector to the Borough of Keansburg. It was sold to the Borough of Keansburg in the amount of $1,496.35, which was the amount of delinquent taxes for 1929. The land in that Certificate is described as follows: "Plot northside Beachway on the Tax Sale Certificate of said municipality and assessed thereon to Peter Licari, Inc. as the owner for the year 1929" **(1T71:16)**. A Tax Sale Certificate is sold at a public auction if lands become tax delinquent. The purchaser of a Certificate then holds the right to conduct a foreclosure to perfect title to the property because until it is perfected, it is an encumbered right. A Notice of *Lis Pendens* was filed on May 29, 1939. It was prepared by the law firm Schneider, Roberts and Pillsbury which did a considerable amount of Municipal work **(1T76:6)**. The Notice of *Lis Pendens* lists a series of tracts which identifies the fourth tract as being a parcel located in the Borough of

Keansburg with descriptions as to the first tract, second tract and third tract. The fourth tract is the subject property and it indicated that this is in the north side of Beachway on the official Tax Map of the Borough of Keansburg. The Riparian Grant is a body of land that is subject to being transferred and also being taxed. Venino agrees that it is clear from this document that when Keansburg was foreclosing a property that was owned by Licari, Inc., the property that they were foreclosing was on the north side of Beachway. Thus, the *Lis Pendens* did not include the Riparian Grant **(1T75:22)**. Venino describes the description of the fourth tract on page 405 of the final decree **(1T78-79)**. Venino opines that Riparian Rights may be conveyed, but not Riparian lands **(1T79:17):**

> "I don't know that they acquired any. It is possible that a small sliver of grant is included in the description of lands that went to the 1918 mean high water line which would have been the lands shown on the Municipal Tax Map. I don't know of any provisions that may have been made to show a different line. It's possible a small portion. But only the lands which were described in the final decree would have been the lands that were acquired by the Borough, not what I will call the "Quinlan Grant." **(1T81:3-12)** (emphasis added)

Venino confirms that in his reading of Panetta, it is his opinion that even if it is not referenced in a description, a Riparian Right as opposed to a Riparian Grant, would inure to the benefit of the upland property owner **(1T82:11)**. The upland owner would have reasonable access to utilize the waters on the bay way side of the mean high-water line. He confirms that there is no way, unless it is expressly set forth, that a Riparian Grant would be deemed to be appurtenant to an upland property

owner **(1T82:20)**. The map only shows one Riparian Grant which would be in Lot 3.01 **(1T82:25)**. There is no reference in the Deed from Peter Licari to P. Licari, Inc. as to either a Riparian Right or a Riparian Grant but, as a matter of law, a Riparian Right would in fact pass as an appurtenance whereas a Riparian Grant would not **(1T83:1-9-87)**. Venino points out that a Riparian Right to use the water is an appurtenance right which automatically passes and does not need to be mentioned pursuant to N.J.S.A. 36:3-16. **(1T90:4)** On cross examination, the Borough's attorney asks whether in reviewing documents regarding property rights, it would be fair to say that the issue of the intent of the parties is an important issue. Venino disagrees that if a document clearly states what is to be conveyed, there is no need to look for intent **(1T93:5)**. The Court asks for explanation of the high-water line:

> Q: Now, I know we have been talking about the mean high water line before. That is significant because that is the boundary between what would be considered Tidelands and what would be considered uplands, correct?
>
> A: The line between, yes, the Riparian lands and the uplands.
>
> Q: Right. So, whatever the mean high water line is on a particular date and time would be significant because that would show where the Riparian Rights or where the Riparian land begins and where the uplands begin, correct?
>
> A: Correct.
>
> Q: Now, in terms of the mean high water - -
>
> The Court: Okay, explain that in greater detail, please… I asked him to explain his answer in a little bit greater detail… ***

A: Well, the uplands will be demarked by the mean high water line, the lands below that, subaqueous lands are those that are Riparian lands so the boundary between the two will establish what is uplands and what its title or Riparian lands that unless severed belong to the State of New Jersey.

The Court: So, when there was a conveyance of a Riparian Right, the land that is conveyed is the land under the water? –

The Witness: a Riparian Grant would convey the land under the water.

The Court: under the water, how far?

The Witness: until, well, you get to the actual land over which the water flows;

The Court: how far out? In other words -

Q: And it would be the - -

The Court: - like the Riparian Right in Keansburg doesn't go from Keansburg to Scotland. How far out?

The Witness: Well, the State owns up until whatever the boundary of the State of New Jersey might be and after that point, it may be international waters and not the State of New Jersey. Until that point is reached, all the lands that are under the water belong to the State unless severed by the State. In this case, the severance was the grant made to Quinlan in 1879.

The Court: So, Quinlan had all of the land under the Raritan Bay from the shoreline to international waters?

The Witness: No, out to the pierhead line and State did not. They could have gone farther Your Honor, they could have extended it farther but limited the length of the grant. I think it's; I mean 2,280 feet; I'll say roughly 2,300 feet. But that's all the State was willing to grant. It did not want to go any farther for navigation reasons and established what it called a pierhead line, so the grant went to the pierhead line. So, it

wasn't all that the State could grant but it was what they would call a limited grant to the Applicant, Quinlan.

Q: Can you explain what a pierhead line is?

A: A pierhead is the line to which you can extend a pier . There are generally two lines shown on the Riparian Grant, one would be a bulkhead line and one would be a pierhead line. The bulkhead line would be for fill so you could fill up to the bulkhead. Of course, you need permits but that is a line for which fill would be permitted.

Q: So, pierhead line would typically be farther out, and a bulkhead line would be closer to the shore?

A: That is generally the way it is. I may have also seen where there was a coterminous pierhead bulkhead for some reason. I can't say that is not the case but generally speaking the pierhead line extends past the bulkhead line.

The Court: You wouldn't want a pier –

The Witness: Right, you wouldn't want to go out five miles on a pier.

Q: It would be a long pier. So, in 1879, Mr. Quinlan obtains a Tidelands Grant from the State of New Jersey, correct?

A: Yes.

Q: And that Grant grants him Riparian lands, Riparian subaqueous lands from whatever the mean high water line was in 1879?

A: Yes.

Q: So, let's just talk about that for a second. The mean high water line essentially is what I will call high tide if it is a tidally flowed piece of water, correct?

A: Well, they use the mean of tides, and I can't, I'm not a scientist, I can't tell you how many different tides they are going to utilize. Whatever formulas they do, they determine a mean and that is the line,

> it's, I hate to use it in terms of Riparian, but it's fluid because it can change over time.
>
> Q: Right, and that is what I was going to ask you. So, for example, I know there is a term you used in your report called accretion which my understanding is that means that whether it is sand or other things the land grows by virtue of accretion and therefore the mean high water line moves further out, correct?
>
> A: Yes.
>
> Q: And likewise, there is a concept called erosion where the land shrinks from where it had been, and the mean high water line would come in from where it had been.
>
> A: Correct. It would move land -

Venino confirms that in 1879 when Quinlan received the Tidelands Grant from the State he owned the uplands and the Riparian Grant, so if the mean high water line was changing it did not particularly matter because he owned both sides **(1T99:1)**. Venino agrees that Lot 3 and Lot 3.01 have some overlap and there are some parts of each lot that transfers automatically **(1T112:2)**. He concludes that the Riparian Grant was transferred from Quinlan to Keansburg Heights Company with the Deed together with the type of omnibus clause or omnibus description which is accepted in the industry as one way of showing intent and showing what is being conveyed and in this instance it said: together with such Riparian Rights and other rights in the lands lying under the water of the Raritan Bay in front of and in adjoining the above described properties as are now vested in the party of the first part **(1T116:21)**. He confirms that in 1920 when Keansburg Heights Company

transferred the land to Peter Licari, they are transferring the beach area. Licari acquired specific properties with reference to the 1909 Final Map. It included the beach area and the specific properties on the Final Map **(1T118:18) (J-5, Pa923)**. Keansburg Heights Company did not convey the Riparian Grant. The Final Map is a usable document for the description of premises and the only lands that were conveyed were the properties shown on the Filed Map; Quinlan was not on the Filed Map. He points out that if there was an intent to convey the Quinlan Grant, it could have specifically said: "together with the rights to grant land William J. Quinlan," and then whatever the date was, it does not say that **(1T120:19)**. The lands that it is conveying are operative. All their interest in those particular properties is being conveyed but it does not include lands that were not being conveyed to the Grantee **(1T121:19)**. He confirms that he is not even sure if the property which they are discussing is actually assessed for taxes **(1T123:21)**. He was not only retained by Jersey Shore to give expert title testimony but was also retained by their attorney to assist in acquiring outstanding title interests to the Quinlan Grant **(1T124:17)**. He contacted individuals who were identified as heirs of the Keansburg Heights Company and negotiated Quit-Claim Deeds with those individuals **(1T124:22)**.

Jersey Shores title expert Geoge Piccola also testifies **(1T129:19)**. Piccola confirms that the Deed from Keansburg Heights Company to Licari does not include title to the Riparian Grant **(1T134:19)**. While Quinlan was in title, he chose to

acquire the Riparian interest of the property that was adjacent to the upland but not the entire uplands, just a portion of the uplands. Referring to J-5 **(Pa923)** he describes the Deed when Keansburg Heights sells to Licari:

> When Keansburg Heights sells it to Licari, the Deed is in Book 1111, Page 6. That Deed is dated April 8, 1920. That Deed which is interesting about the deed within the four corners of the Deed, you can tell that when they drew this Deed, they were very specific as to what wanted to convey. It specifically talks about this map, not the Map, the other map also includes this map as well but it specifically limited to what is on this map and not on the other map which means that they knew that they didn't want to sell the balance of the property off because they would have included it in here which made me also conclude that if they wanted to sell the Riparian title, they would have included the Riparian Title in the Deed. It's excluded as well as the other portion. The 1910 Map that shows the other lots are excluded from the conveyance. So, as a title searcher, I looked at it and I did not feel that the Riparian Title was included within the four corners of this Deed and as was testified it refers to all right, title, and interest claimed whatsoever. The party of the first part in and to the same and of and in to evert part and parcel thereof. Well, that's fine. But it is limited only to showing what is shown on this map, nothing outside of this map.
>
> And I think it was, it was stated in here, it says: all the property owned by the party of the first part, referring to this map, except a couple of pieces, this conveyance includes all right, title and interest of the party of the first part outstanding contracts relative to the premises and all improvements on the property. All building and materials… and said all to the party of the second part… So, in looking at this, I have a question, I don't see the Riparian Title conveyed nor do I see the other lots that are part of the other map. (1T139:1-21)

For whatever reason, they built a landfill in that area and then this grant was given and that is where they located the high-water mark line. It shows the width of the grant is 316 feet and it shows the length of the grant extending into the Bay to

the bulkhead is 1,465 feet and then from the bulkhead out to the pier head is 833 feet **(1T144:1-4)**. A bulkhead line was established by the State so they could still develop the property in the bulkhead by putting buildings on it, but they could not go beyond the bulkhead out to the pier head. There could be a pier out there. One could bring a boat in and so forth, but one could not fill in the property out to the pier head **(1T144:7-13)**. The only person who would have legal authority to fill in that line up to the bulkhead would be the owner of the Riparian Grant which would be the land under the water. Quinlan had the right and if Quinlan sold that right to someone that right would go along with that person who could develop the property **(1T144:21)**. He confirms that when Quinlan acquired the property, only he had the right to fill in up to the bulkhead line **(1T144:25)**. The significance of this being the establishment of a pier headline is that in his opinion it is a sort of survey or engineering way to identify where the Riparian Grant actually was given.

He testifies that Quinlan owned a lot more property going left of where this Riparian Grant is. For some reason, Quinlan only chose to buy a sliver adjacent to his upland because his upland is the entire length of the Filed Map. He chose to acquire where he had a dock **(1T145:11)**. When asked if this would demonstrate an intent on the part on Quinlan, since he owned all the upland, to also have his specific use for Riparian Grant, Piccola testifies: "Well, obviously he did, this is a dock shown on here, so it wasn't like the property wasn't being used for something. And

also, if you notice on there, there is a building on the upland that is there" **(1T145:16-19)**. Piccola testifies that in order to make an application to acquire the Riparian Grant, one would have to prove he is the upland owner. However, in certain cases, the upland owner can transfer those rights to another person that can act and acquire the property but not actually be the upland owner that time **(1T146:8)**. If the upland owner and the owner who owns the Riparian Grant can separate and convey away just the upland and not the Riparian Grant, Piccola agrees because what happens is, it becomes a fee to title. Once it becomes fee to title, he theoretically could have subdivided the Riparian Title into lots and sold them off independently **(1T146:16)**. In this particular case, if Quinlan, who owned the Riparian Grant as well as the upland chose to simply convey the upland, he could have retained title to the Riparian Grant. Piccola confirms that this is his conclusion because when Quinlan sells to Keansburg Heights Company, he includes the 26 acres plus the land underwater **(1T146:25)**.

He points out that the land under the water is specific. It is not Riparian Rights, it is not water, it is land. Once the grant is given and he owns the upland, there is a merger of titles because it has got the same owner for both pieces. It merges the property together and becomes part of the overall. He then decides to sell the property out to Keansburg Heights Company which included the Riparian in his opinion and then Keansburg Heights Company decides to benefit from that, and they

decide to develop the property. They picked the wrong time in history because of the Great Depression and so forth, but they started to sell off properties. They sold off the piece to Licari and in that Deed, it is his opinion that the Deed does not include the Riparian Title and it does not include the other lots that were shown on the 1910 Map **(1T147:10-22)**. It shows the beach itself and there is reference in the foreclosure to the beach **(1T148)**.

When asked if in any of Deeds subsequent to Keansburg Heights Company taking title, if there is any reference to the Riparian Grant also being transferred, Piccola confirms: "Not in my opinion" **(1T148:18)**. In fact, there is no reflection of the Riparian Grant on the 1909 or 1910 Map" **(1T148:23)**. In his opinion, if there is reference to a map and the Riparian Grant is now shown, it could not possibly have been conveyed **(1T149:2)**. Piccola confirms: "I think it shows that they knew not to sell certain properties including the Riparian Grant as well as the other group of lots that were on 1910 Map **(1T149:8)**. He confirms that these Deeds show a specific intent to exclude the Riparian Grant **(1T149:21)**. He points out that the current Tax Map still shows Quinlan as being the owner of the area where the grant is **(1T150:3)**.

Piccola also has copies of the 1940 Assessment Records. In certain cases, it shows what the taxes are. He finds a number of properties that are assessed to the Borough of Keansburg. Some of those are part of the final judgment, but the Quinlan

piece, the Riparian Title is not listed at all as being owned by the Borough **(1T151:23)**. He testifies that it is his opinion that the reason Lot 3.01 is not noted at all in the Assessment Records is because they did not acquire it in the Tax Sale **(1T152)**. If they had acquired it under that Tax Sale Foreclosure, whoever the Assessor was at the time, did not feel that they got title to it **(1T152:20)**. This is further confirmed by the fact that on the new Tax Map shown **(Pa927)** the description in the Final Judgment runs basically between Beachway and the high-water mark line. He opines that the new Tax Map **(Pa927)** deliberately shows Quinlan as being the owner of Lot 3.01. The Tax Map clearly reflects the fact that there was separate ownership of Lot 3.01 and Lot 3 **(1T157:14)**. He concludes based on the foreclosure documents as well as **Pa201 & Pa202**, no part of the Riparian Grant was foreclosed and as a result of the foreclosure, title to the Riparian Grant never came out of Keansburg Heights Company. Keansburg Heights Company retained ownership to the Riparian Grant Title, and they were not named in the foreclosure proceeding **(2T25:11-18)**.

Jersey Shore also calls Johnson to testify as an expert genealogist **(3T4)**. Johnson was tasked with tracing the next of kin of the three individuals who are the last surviving heirs of Keansburg Heights Company **(3T7)**. She refers to the next of kin chart, Exhibit 4, which is referenced in her report **(P-7, Pa208) (3T10)**. Enclosed with her report is a Certification of Exhibits dated August 29, 2018. She testifies

that LHE Hunter, A.E. Straker, and P.C. Hunter were shareholders of Keansburg Heights Company **(3T9)**. The chart referenced in Johnson's Report as P-8 is also entered in evidence **(3T10)**. She was tasked with identifying the heirs of the three individuals who were identified in the 1908 Certificate of Incorporation as the shareholders of Keansburg Heights Company **(3T17:15)**. Venino continues to testify as to title (3T42:24). He confirms that his opinion remains that Keansburg Heights Company did not transfer title to the Riparian Grant and is the last record owner of the Riparian Grant **(3T45:5)**. He concurs that Johnson was retained to issue a genealogy report because the Riparian Grant was not conveyed by Keansburg Heights Company **(3T45:11)**. He testifies that successors to that entity, which was the last record owner, executed Deeds in order to provide clear title to the Riparian Grant **(3T45:17)**. He determined who the surviving heirs of the original shareholders of Keansburg Heights Company was and predicated that determination not only on Johnson's Report but as well as an independent examination which he conducted **(3T46:1)**. He secured Deeds and recorded those Deeds **(3T46)**. He testifies that he prepared his own genealogy, his "cheat sheet", which explains all the Deeds that were entered into evidence as P-10 **(3T47:4; Pa279)**. Roxanne Kwiatek was identified by Jersey Shore as a nominee who could hold the property and ultimately conveyed the rights she obtained to Jersey Shore, the corporate entity **(3T66:23)**. All of the interests that were acquired were now conveyed out of

Kwiatek and into Jersey Shore Beach & Boardwalk Company, Inc. **(3T61:23)**. Kwiatek acquired all of the interest with the exception of those successors of Paul A. Hunter and Florence Haitsch, and all of these were transferred to Jersey Shore **(3T61:12-23)**. The Court admits P-10A through P-10D into evidence along with the cheat sheet to assist the Court with tracing of the Deeds. When he prepared each Deed, he took the language for the description from the Riparian Grant **(3T65:24)**. He confirms also that he was not able to obtain a Quit Claim Deed from the line running from Florence Haitsch and her husband **(3T74:13)** or for six interests on the Paul A. Hunter line **(3T75:2)**. Keansburg enters as Exhibit D10 a color-coded chart which the defendants' attorneys prepared purportedly showing which interests Venino obtained and which interests he did not. **(3T77:8)**.

Keansburg calls Thomas Cusick, the Deputy Borough Manager, Municipal Clerk and Tax Collector of Keansburg at the March 9, 2022, Trial **(4T16:21)**. He testifies that he "believes" the Borough owns Lot 3 and Lot 3.01 **(4T21:18)**. He bases this decision on Borough records. He has been employed by the Borough since 1988 **(4T21:25)**. He testifies that there is an exempt property list that is generated by the County Board of Taxation which is in the Borough Tax duplicate, and he has access to these lists. He testifies D-7 **(Pa869)** lists all exempt properties for the Borough of Keansburg **(4T23:1-18)**. As to Lots 3 and 3.01, the Block and Lot numbers changed effective 1980 for the Borough of Keansburg because the State

wanted the Borough of Keansburg to move away from using lettering in the Block and Lot numbers **(4T23:25)**. The maps were done in 1980 as a complete overhaul of the Tax Maps. Many of the lots were re-numbered at that time. Lots 3 and 3.01 may have had different numbering pre-1980 **(4T24:11)**. He testifies that of the records he reviewed, there are no tax bills or tax revenues for Lot 3 or Lot 3.01 **(4T25:23)**. He testifies that the earliest date in D-7 is 1970 and the record goes through 2015 **(4T27:1-8)**. He testifies that on the third page back from D-7 there is a property two-thirds of the way down that says: "Block 10, Lot 1-A" and upon counsel's questioning it is his understanding that this was the former designation of this property (pre-1980) **(4T29:1)**. He has no evidence of any other taxpayer making payments on Lot 3 or Lot 3.01 **(4T29:16)**. Lot 3 contains a municipal parking lot, a bay walk, which is a wooden boardwalk for the public that was built with Green Acres funding. There is a portion of the property leased to Jersey Shore which contains amusements. The Riparian Grant is shown on the Tax Map. The portion of property that is currently leased to Jersey Shore, was previously leased to the prior owner of the amusement park, Grandal Enterprises **(4T30:1-13)**. He testifies that when a portion of the property was leased to Grandal Enterprises by the Borough it was before his employment at least back into the 1970's or possibly late 1960's. **(4T30:22)**. When he started in 1988, Grandal Enterprises was still on the property **(4T31:2)**. He refers to D-2, a letter from the Borough Attorney, Mr. Iadanza dated

October 8, 1991, to Grandal Enterprises who was leasing the property at the time. He sent a letter at the Council's direction that if he were not the successful bidder on the property, he has to remove any improvements prior to the lease termination **(4T30:10-22)**. However, the letter he is referring to only refers to Lot 3, Block 1084 whereas the property in question is Lot 3.01. The Court notes that the Court is "...not sure how it relates. It doesn't hurt a claim on 3.01 if it is only relating to Lot 3. So, if relevance is the objection, I'm going to overrule it now because if this is a document that he has testified relates to Lot 3." Counsel for Plaintiff points out that Lot 3 is owned by the State of New Jersey **(4T32:1-11)**. Cusick testifies that it was his understanding that a portion of the property that was originally Lot 3 was leased to Jersey Shore. He testifies that there was a sketch that was included in the bid specifications, and it showed the boundaries of the property that was subject to the lease. He agrees that the portion of the property currently leased to Jersey Shore is the same portion of the property that was previously leased to Grandal Enterprises, the previous owner of the amusement park **(4T33:7)**. When Counsel for the Borough asks to move D-3 into evidence, the Court asks how it is relevant if it doesn't affect Lot 3.01 **(4T33:22)**. Counsel for the Borough asks some more questions regarding Lot 3 and Lot 3.01. He asks Cusick if he understands Lot 3 and what the boundaries of Lot 3 are and Cusick replies: "Yes, I have a general understanding. Yes." The Court then asks: "Are any of the leased premises contained

on Lot 3.01?" The witness responds: "Lot 3.01 that I understand, it's a Riparian Grant. Because that is water" **(4T34:13-16)**. The following colloquy follows:

> The Court: Okay, can you answer, is it your understanding any of the leased premises are on Lot 3.01? If I, I don't mean to answer for you, but it sounds as if you are saying: "No," but I don't know.
>
> A: "My assumption is the Riparian Grant is starting at the beach and out to the water, so it would be on Lot 3, how I understand it, it was on Lot 3, the leased premises."
>
> The Court: "Okay, alright, go ahead."
>
> Mr. Clark: "Okay.
>
> Q: So, your understanding is that what was leased to Grandal was some portion of Lot 3, correct?"
>
> A: "Correct."
>
> Q: "And your understanding is that when Grandal – well let's ask. Did Grandal stop the lease or did the lease run out at some point and it left the premises?"
>
> A: "The lease ran out. The Borough Council at that time wanted to retain use of the property. Grandal executed, ceased use of the property."
>
> Q: "Okay, and approximately when was that?"
>
> A: "Approximately 1992."
>
> Q: "Was there a period of time where that former leased premises was not being leased to anybody?"
>
> A: "Correct."
>
> Q: "How long was that for approximately?"

A: "Approximately 2 to 3 years."

Q: "Now at some point in time, did the Borough advertise for potential bidders to lease that same leased premises again?"

A: "We did."

Q" "And approximately when was that?"

A: "We did try again I think in 1994. So, the bidder was unsuccessful in meeting the requirements of the bid. We did not move forward with that at that time. Then it was put back out to lease, I think the following year in 1995 and there was a new owner of the amusement park which is Jersey Shore Beach & Boardwalk, and they submitted a successful bid on the lease." **(4T35-36)**

He testifies to **J-12 (Pa969)**, the lease that the Borough entered into in 1995 which describes what is being leased to the lessee as follows:

"A portion of certain real property located in the Borough of Keansburg, designated as Block 184, Lot 3 of the Tax Map of the Borough of Keansburg. More particularly described on Exhibit A which is attached." **(4T36:20)**

Counsel points out that there is no Exhibit A on J-12 but asks what Cusick's "recollection" of what Exhibit A was. Cusick replies that Exhibit A was a sketch of the leased premises and it had the measurements of the property that was adjacent to the amusement park and part of Lot 3 abutting their use of the municipal parking lot **(4T36-37:2)**. He testifies that these were the same premises that were previously leased to Grandal Enterprises. He testifies that J-13 **(Pa982)** is Resolution #56 of the Borough authorizing the public sale of a leasehold interest in a portion of municipally owned property. J-19 **(Pa1027)** is a Settlement Agreement between the

Borough of Keansburg and Jersey Shore which did not have to do with the lease of the premises but amended the existing lease between Keansburg and Jersey Shore **(4T39:24)**. However, this amended lease makes the change to Lot 3.01 at J-19 **(Pa1027).** The front of J-19 reflects that pursuant to a lease agreement between the parties executed May 17, 1999, the original lease, Jersey Shore leases from the Borough certain real property located in the Borough of Keansburg and designated Block 184, Lot 3.01 on the Tax Map of the Borough of Keansburg. This document says lot 3.01 even though the previous documents all said a "portion" of Lot 3. When asked why that document has that designation, Cusick replies: "That I recall, for practical purposes, we designated it as 3.01, the leased portion from Lot 3." He testifies that internally, Lot 3 was under municipal control of the parking lot and the wooden boardwalk and Lot 3.01 was being leased and that is why that designation was made in J-19 **(4T41:8)**. He testifies that there was no change in dimensions of the property from what was being leased to Jersey Shore between the 1995 lease and the 1999 lease and then the 2012 amendment and it was the same dimensions as to what had previously been leased to Grandal **(4T41:17)**. He points out that Section 9 of the 1999 lease states that there is no representation of any kind made by the lessor as to the nature or quality of title or as to the condition of the premises **(4T43:1)**. He testifies that no one has taken any action as to any portion of Lot 3 or Lot 3.01 that they had any ownership interest **(4T45:14)**.

Cusick claims he does not know why the grant to Willima J. Quinlan is present on all of the Tax Maps in the Borough of Keansburg between the year 1930 to present **(4T57:1-14)**. He agrees that the mean high-water line reflected on Pa202 in 1918 runs along the northerly border of Beachway and proceeds onto Lot 2 and then proceeds along Lot 3 several feet north of Beachway and the dotted line proceeds in an easterly direction of cross lots 1,2, 3 and what is now called Lot 3.01 **(4T61-2)**. He admits that there is no Deed where Quinlan deeded Lot 3.0, which was the subject matter of a grant to Quinlan dated May 10, 1979, to someone else **(4T67:20)**. He agrees that the allegations of ownership came up after the last lease was signed **(4T71:11)**.

Trial continued to February 8, 2023, and the Borough calls Michael B. Finnegan ("Finnegan"), a Group Manager with T&M Associates, Consulting Engineers who are appointed as Keansburg Engineer **(5T4:25)**. He has assisted with drafting changes for the Tax Map of Keansburg **(5T6:19)**. He worked on an overhaul of the Tax Map in 2017/2018 so the Borough could provide it to the State Division for approval for re-evaluation purposes **(5T7:13)**. Tax lots and blocks were numbered differently, and they were changed as part of the Tax Map update, but he does not know when they were changed. The 1980 version seems to be the same numbering system parcels of property but with different lot and block numbers **(5T8:25)**. He is shown P-1 which is the 1980 Tax Map **(5T10:1)**. He points out that

J-1, sheet 33 is a Tax Map revised in 2017 **(5T11:6)**. He testifies that J-1 shows Lot 3 as 7.58 acres **(5T11:14)**. He testifies that the Lot 3 boundaries did not change between the 1980 Tax Map and the 2017 Tax Map. Lot 3.01 is the Riparian Grant fronting the water side of the property and goes out from Lot 3 into the water **(5T13:15-21)**. He testifies that there is a designation on Lot 3.01 and that it indicates it is a Riparian Grant to William Quinlan in 1979 **(5T14:17)**. The designation is supposed to show a simple outright grant from State jurisdiction to Quinlan granting them that piece of property. It is granted riparian land that is now privately owned, not publicly owned **(5T14:25)**. He testifies the boundaries are generally from the mean high-water line when the grant was given all the way out to what is called the pierhead or bulkhead line approved by the Secretary of the Navy back in the 1940s **(5T15:19)**. It is several hundred feet wide and fronts Beachway, the mean high-water line just off of Beachway **(5T:25)**. There is no overlap between what is designated as Lot 3.01 and what the Borough has been designated since 1981 as Lot 3. He testifies it is a "gray area" but technically the 3.01 would represent what is waterward of the mean high-water line **(5T16:12)**. It is his understanding that Lot 3.01 is supposed to show the waterward rights not the upland rights. He agrees that if the water is moving, then Lot 3.01 is sort of moving along with it; Lot 3.01 simply represents a water parcel. He states that it is very common when someone is preparing a Tax Map that it would show water rights if there was a Tidelands Grant

(5T17:11). He believes that the Tax Map suggests that Lot 3.01 is affiliated with and related to Lot 3 **(5T17:24)**. Finnegan testifies that the mean high-water line is generally a calculated line based on observations of high-water mark, low water mark, literally surveyed. The mean high-water line is basically an average line and represents a boundary that is recognized in certain cases. It is recognized by the State Bureau of Tidelands as their jurisdiction because the State Bureau of Tidelands has ownership rights over anything that is past the mean high-water line **(5T18:24)**. The uplands would normally be owned by a private citizen or public entities **(5T19:2)**. He testifies that a mean high-water line changes over time for two reasons. One would be natural accretion, sand doing its natural thing, either being dumped on the land or taken away in a nasty storm, which would be natural accretion changes along that natural line. There is also manmade accretion or the opposite, taking sand away which would be erosion. Manmade accretion is a beach-fill project which has happened there many times. Accretion means someone is adding to whatever was there already **(5T:19-23)**. If there was a boundary between the water and the land that was made up of sand, something is added to that boundary if there is accretion whereas erosion is the opposite, something is subtracting from that boundary **(5T20:5)**. He testifies that he prepared a map in connection with an application that the Borough filed with the State Tidelands Resource Council **(5T20:22)**. Looking at J-1 **(Pa900)** he signed it as a surveyor and the purpose of it

is that it is a boundary survey and topo depicting Lot 3, and Lot 3.01 in Block 184 **(5:21:12)**. He indicates that the "snaky-curved lines" are the Keansburg Amusement Park Go-Cart Track the Borough is leasing to Jersey Shore **(5T22:8)**. He plotted the Tax Map and superimposed where the go-cart is in relation to Lots 3 and 3.01. He testifies he looked at numerous Deeds, numerous record surveys, filed maps anything he could get his hands on that would help strengthen the boundaries or understanding of the boundaries and the plotting **(5T22:19)**. He testifies that a good three quarters of the property of the go-cart track is on the property that the Borough has identified as Lot 3 **(5T15:25)**. The balance of it is on Lot 3.01 **(5T23:8)**. The fourth document in on J-1 shows the various mean high-water lines.

To the best of his understanding, the mean high-water line in 1939 would have been in this case what it was in 1918 **(5T34:23)**. He testifies to various actions which the Borough undertook to show its "assertion" of ownership. However, on cross examination, he agrees that he did not look at the Certificate of Tax Sale which was the basis for the foreclosure proceeding **(5T53:16)**. He also agrees that the only basis for his making the determination that the Riparian Grant was being foreclosed is a statement in the document "together with all Riparian Rights…" **(5T56:2)**. He admits he has no knowledge whether the owner of the Riparian Grant was joined in the foreclosure proceeding **(5T56:5)**. He never made any attempt to determine whether Quinlan ever conveyed the Riparian Grant **(5T58:11)**. He agrees that in

1918, all the property located to the north of the mean high-water line and more particularly in regard to Lot 3.01 was owned by Quinlan. In looking at P-3 **(Pa 203)** he admits there is a very thin portion of land north of Beachway and that would be the mean high-water line as of 1918. He is aware of no other creation of a mean high-water line between 1918 and 1939 which was the date of the foreclosure proceeding (5T63:18). He agrees Quinlan acquired a Riparian Grant from the State of New Jersey that gave Quinlan title to the land lying beneath the water and if the land was later filled in, title would still remain in Quinlan who owned the Riparian Grant **(5T73:17)**.

The Borough calls Robert Yuro ("Yuro"), the Client Manager in the Municipal Services Department of T&M **(5T78)**. He testifies generally that the Borough of Keansburg has been responsible for improvements or rehabilitation of the walkway on Lot 3 along with Beachway Avenue **(5T80:10)**. The redevelopment area consists of Block 184, Lots 1, 3, 3.01 and there is a Redevelopment Plan that governs the zoning **(5T80:23)**. There is a Redevelopment Agreement with the Sackman Development Group for Block 184, Lot 3. The Borough subdivided Lot 3 because of the Redevelopment Plan. There was an application to the DEP Tidelands Department in order to get a portion of the Tidelands extinguished or released from Lot 3. The Tidelands Agency Department requested that a subdivision be provided to section out just the parking lot area for ease of relinquishment of that current

Tidelands claim. The subdivision resulted in a lot which was just the Municipal Parking Lot. The remainder of Lot 3 would include the area currently known as the go-cart area and then the dune system and the boardwalk that is immediately north of the existing gravel parking lot (5T82). He testifies the Tidelands claim is across the entirety of Lot 3 up to the 1918 mean high water line that runs adjacent to Beachway Avenue. The claim does not include the portion of Lot 3 that was formerly the Quinlan Grant area **(5T83:2)**.

Keansburg calls its Title Expert, Edward Eastman, Esq. ("Eastman"), to testify on February 15, 2023 **(6T3).** When asked what his opinion is of what Quinlan conveyed to Keansburg Heights Company, Eastman refers to the Keansburg Heights Map of Case No. 36-19 dated June 25, 1909. He indicates this is significant because prior thereto it was undevelopable because it did not break up the lot into specific lots that could be sold, and this then placed upon the records of the Monmouth County Clerk's Office the Deed Books and the lots of the various lots that were created as to Keansburg Heights. It also had a metes and bounds description **(6T28:16)**. He testifies that Quinlan sold the Keansburg Heights Company, with a map as prepared and subdivided such that the Map of Keansburg Heights dated 1909 was created **(6T29:9)**. When asked if Quinlin sold the Riparian Grant to Keansburg Heights Company, Eastman gives a convoluted response but essentially states that the map does not show that a bulkhead area was put in but instead shows a beach as

the area between the housing lots and the Keansburg Heights area. In his opinion, the Deed indicates that Quinlan sold to Keansburg Heights Company a described area as shown on a map which includes the subdivided lots and the beach area up to where the bay meets the beach **(6T30:22)**. When asked what his conclusion is when he reads the language regarding the Riparian Rights as to what was intended to be conveyed, responds:

> "I think it was intended to convey an interest in the Riparian Rights on the property, that it was together with the Riparian Rights and other rights, privileges and franchises, showed that they intended to convey everything that they had to own, the upland portion and any portion in the Riparian area that had been granted by the State." **(6T31:17)**

He acknowledges that the 1980 Tax Map of Keansburg shows on the northerly portion the mean high-water line 1964 **(6T62) (Pa201)**. He agrees that the property described as upland on P-2 **(Pa202)** would be that land which is upland of the mean high-water line **(6T65:24)**. He also agrees that the Riparian Grant would in fact be going from the shoreline out to the sea or out to the water and the land line beneath that water would be the Riparian Grant **(6T66)**. That is all of the properties which are located south of Ocean Avenue would be the upland **(6T66:8)**. Ocean Avenue as well as the beach would be referred to as the upland. He agrees it is possible that the area north of the beach which is the heavy line would be the mean high-water line **(6T67:20) (Pa26)**. He generally agree that the Riparian Grant will always be adjacent to the upland property **(6T74:18)**. When asked if he has a drawing that

shows the mean high-water line other than what it is shown on the 1980 Tax Map **(Pa201)** Eastman replies that he does but that it is "back at the office" **(6T80:5)**. He claims he did not bring it with him because it was not one of the marked Exhibits. The hearing concludes **(6T80)**.

Eastman's testimony continues on April 25, 2023 **(7T)**. He concedes that land with water over top of it can be purchased freely and assigned and that they are part of a Riparian Grant **(7T58:15-24)**. Eastman believes the Riparian Grant was transferred from Quinlan to Keansburg Heights Company, even though it is not specifically mentioned by metes and bounds within the conveyance documents:

> "Yes, that is correct, it acquires the fee title to the adjacent lands under water from the State of New Jersey by way of a grant, and such waters under water comprise and form what is known as Lot 3.01. I agree." **(7T62:10)**

The next conveyance is Keansburg Heights Company to Peter Licari on April 6, 1920 **(7T62:16)**. He admits that when one receives a Riparian Grant, they are acquiring title to the land which is under tidally flowed water **(7T73:19)**. When asked if someone acquires a Riparian Right, does he also acquire title to land which is lying beneath the water, Eastman indicates he needs time to "think about it" **(7T74:6)**. Finally, the Court asks, "are you still thinking or is it your testimony that sitting here today you have no opinion on the question?" Mr. Eastman responds: "Sitting here today, I have no opinion on the question" **(7T75:7)**.

Piccola, Jersey Shores second title expert, testifies as a rebuttal witness. He points out that Riparian Rights pertain to the ability to acquire a Riparian Grant if you are the upland owner. Riparian Rights only exist on properties that have been claimed by the State up to the high water mark line. If someone is the upland owner, he can make an application to the State to buy that property. Once you have the grant, you are the owner of the property under the water **(7T80:16)**. He agrees that in this case, Quinlan acquired the upland by a Sheriff's Deed, at Book 314, page 150. Subsequent to acquiring the upland, he also acquired a Riparian Grant, so he owned two separate parcels of land, the upland and the Riparian Grant. They were contiguous to one another. When Quinlan conveyed both of those parcels to Keansburg Heights Company, it was a parcel of land 26.75 acres which is the upland and then further described together with Riparian Rights as well as the landline under the water of Raritan Bay in front of and adjoining the above premises as are now vested in the party of the first part. Thus, Keansburg Heights acquired title to the upland that Quinlan owned and also acquired title to the Riparian Grant or the land underwater as it was referred to **(7T81:1-20)**. When Keansburg Heights conveyed property to Licari, he testifies to P-5 which shows all of the upland properties which are south of Ocean Avenue **(Pa206)**. It shows an area immediately north of Ocean Avenue which was referred to as the beach and where the high-water line is located. Based upon reference to this map that is in the description of the Deed, Piccola

indicates that the Deed that goes to Licari does not include all the property high-water. It is limited to property that is identified as Block D, all the lots in Block, all the lots in Block G on that map **(7T83:3)**. All those properties are on the map and are south of the mean high-water line; they are upland properties **(7T83:9)**. There is another statement in P-5 which clarifies what the "intent was to convey." It states, "also together with property now owned by the party of the first part as shown on the map." Thus, they limit it to the property that was shown on the map and no other property. What is not shown on the map, in his opinion, is not conveyed **(7T84:1-6)**. He also points out that in the Deed from Quinlan to Keansburg Heights property, that is the only Deed that identifies a piece of property that is underwater. He checked the title work and found that Quinlan did not own any other piece of property that was underwater other than this piece, there was not any other property that was underwater **(7T85:14)**.

Venino explains again on rebuttal that there is a major distinction between the term Riparian Grant and the term Riparian Right **(7T90:24)**. Subaqueous lands are underwater. New Jersey has the right and title to all lands now and formerly flowed by tide. Subaqueous lands are owned by the State unless divested by the State. One of the means of divestment is by way of a grant. A Riparian Grant that is a grant that is given to the upland owner. There is an exception in the Statute as to giving it to a non-upland owner which is not relevant to the case, but quite generally, the upland

owner, if it supplies proof to the State that it is the upland owner and requests that a grant be issued, the State can divest its title to the lands described in the grant. Riparian Rights existed and still exist. There is a major distinction and distinction is gone through in great detail in the Panetta, a New Jersey Supreme Court case. He continues to testify that the interest that we have here were owned by the first grantee and sold by him to the Keansburg Heights Company in 1902. And that was the language that was just read about lands underwater today. The lands under the water. The Keansburg Heights Company developed the property. That was the filed map. P-5 is the Osborn subdivision Map which is filed in the Monmouth County Clerk's Office. The Company, Keansburg Heights Company made a conveyance of lots to Peter Licari. Peter Licari conveyed lots, maybe there was some outsells to Peter Licari, Inc. This is right around the time of the Great Depression in 1929. The taxes and the property fell delinquent and a lien was sold the Borough of Keansburg. Keansburg ultimately foreclosed its liens in four tracts. The subject property comes through Tract #4. In 1939, a final decree came about and was entered in favor of Keansburg as to the lands described in the Final Judgment. As a result of that, Keansburg owned the former lands of Licari, Inc. The foreclosure would also have included any alluvium or deposits, generally silt or sand that would have accredited to the lands upon which the town had a lien. He describes this as being discussed in the Friedman v. Monaco and Brown Corp. 258 N.J. Super. 539 (App.Div. 1992) case

(7T93). Venino states his analysis would be that at the time the final decree was entered in 1939, Keansburg would have had those lands, together with any naturally accredited deposits along the beach. Anything that had been placed there by way of artificial fill would not be included. Artificial fill from whatever source does not gain any title or take any title away from the underlying water **(7T94:1-13)**. When asked if there was any artificial fill, he indicates that according to the Town's Engineer, there was a beach replenishment on multiple occasions that ostensibly added to the claimed ownings of Keansburg. However, the artificial fill gain gives Keansburg title to the lands underneath the artificial fill. He testifies that the mean high-water is a tidal datum. The average of all the high-water heights observed over the National Title Data Epoch and that the mean high-water line is the line on a charter map which represents the inner section of the land with the water surfaces at the elevation of that the mean high-water. He testified that there will always be this line of demarcation between the uplands and the lands that are waters were from the uplands. As far as the reference he had before to artificial fill not depriving an underlying property owner of title, he refers to Justice Albin in City of Long Branch v. Liu, 203 N.J. 464 (2010). He agrees that if any of the conveyance documents after the initial conveyance to Quinlan, used the word Riparian Grant, the intent of the document was to convey the Riparian Grant (**7T98:7**). On September 25, 2023, the Trial Court rendered an oral decision, in pertinent part as follows:

"The Court has reviewed everything, looked at my notes. And the Court finds that the plaintiffs' position is not persuasive to the Court. The Court finds that the Borough legally obtained all interest in the subject property. That was what was conveyed in the foreclosure action. And that the plaintiffs' claims for relief should be denied in their entirety. The Court makes that ruling, finding the testimony of Mr. Eastman with regard to the title issues to be more credible than those asserted by Mr. Piccolo and Mr. Venino. But principally the Court finds that the standard to be applied in connection herewith is one of intent. What was the intent at the time that title passed. Indeed, if – the Court had looked at NJSA 2A:62-1, and in particular the Robinson Shore Development Company versus Gallagher case, 41 New Jersey Super 324. I know that was reversed on other grounds later, but that's the rationale that the Court has taken a look at. And the Court finds principally that it needs to look at, in a quiet title action, what was the intent intended on the conveyance that was made. The issue of intent of the parties is really what is principally at issue. The statute, both NJSA 46:3-13 and 46:3-16, presume that really, unless specifically excluded, the presumption is that the grantor is conveying all of their rights, unless they're specifically excluded....

***

As I look at a review of the title, and the actions that were taken subsequent to the conveyance, I'm convinced that eh parties intended that both the riparian rights and grants, and all interest, were to have been conveyed. Specifically the Court notes that there was no exclusions in the deeds, rather the Court finds that the Quinlan tract was conveyed by use of the terms, quote/unquote riparian rights. And notes that the deed contained therein a together with clause. So, the together with clause encompassed, in the Court's view, the intent of the parties to convey all the rights that existed in the deed. This together with language was employed when the tract was conveyed from Quinlan to Keansburg Heights Company, and then it was incorporated into the conveyances of Keansburg Heights to Licari and from Licari to Licari, Inc. So it was, in the Court's view, conveying not just simply the uplands right in the property, but the together with, and quoted from the language of the deed, together with such riparian rights and other rights, privileges and franchises, in and to the lands laying under the waters of the Raritan Bay, in front of and adjoining the above-described premises, as are now vested in Quinlan. And that's reflected in J-3. So that language certainly was utilized in connection with the chain of title that went from Keansburg to Licari, same together with clause. And

similar language as reflected in the exhibit J-5. Let me quote in part, all the estates, rights, title interest, property claims and demands whatsoever of the said party of the first party of and in and the same to every part and parcel thereof. So, it clearly is the Court's view that the intent of these conveyances was to convey both the riparian grants and the riparian rights. The view to the contrary kinds of defies reason. It is unlikely that there would have been the retention of lands underwater without having the uplands and the adjoining properties. In fact, there would have been no practical way to access riparian lands under water... **(9T9-11)**

LEGAL ARGUMENT

POINT ONE

THE TRIAL COURT'S DECISION IS CONTRARY TO THE LAW IN NEW JERSEY THAT WITHOUT SPECIFIC MENTION IN THE DEED OR OTHER EVIDENCE THAT THE PARTIES INTENDED INCLUSION OF AN ABUTTING RIPARIAN GRANT, A RIPARIAN GRANT WILL NOT PASS APPURTENANT TO ANOTHER DISTINCT PARCEL (Pa1088; 9T9-11)

This case deals with, as a matter of law, the distinction between what is known as a "Riparian right" as distinguished from a "Riparian Grant". This distinction has recently been clearly defined and distinguished in the case of Panetta v. Equity One, Inc.,190 N.J. 307 (2007). The Trial Court ruled that it "...clearly was the intent incorporated into these deeds to obtain all of the property interest of and convey all of the property interest and not retain any interest in the subject property" **(9T11:17-22)**. The Court also looked to the actions of the parties afterwards, noting that the defunct company Keansburg Heights did not assert its ownership, but the Borough did assert its ownership. The findings of the Trial Court are simply not supported by the record and are in clear violation of the Panetta decision. An analysis of the

deeds and documents of record relating to this case clearly show the error of the Court. This not only includes a series of deeds, but it also includes the tax sale foreclosure, copies of maps and other related documents. The property is identified on the Tax Map of the Borough of Keansburg as Lot 3, Block 184 and Lot 3.01, Block 184. Lot 3.01 is made up of both a small upland area as well as an extensive Riparian Grant which is more commonly referred to and identified on the Tax Map as the "Quinlan Grant". As concerns the title to the upland property along the Raritan Bay prior to 1900, the area now known as Blocks 3 and 3.01 was owned by William J. Quinlan. While Quinlan owned the upland, as to Lot 3, the State of New Jersey was and still is the owner of record of the land below the mean high water line. In 1879, Quinlan acquired the fee simple title to the lands underwater from the State of New Jersey being what is today known as Lot 3.01. The State retained ownership of the lands underwater in front of the Western portion of Lot 3. The current Tax Map even recites the Riparian Grant. The Borough of Keansburg had knowledge of this fact and recognizes same on the official Tax Map today.

Accordingly, in 1909, William J. Quinlan was the owner of land shown on a certain Map entitled "Map of Keansburg Heights" filed in the Monmouth County Clerk's Office on June 25, 1909, in Case No.: 36-19 **(Pa206)**. There was a clear reflection as to what was conveyed. "Together with such Riparian rights and other rights, privileges and franchises in and to the lands lying under the waters of the

Raritan Bay in front of and adjoining the above-described premises as are now vested in the party of the first part" **(Pa918).** Unquestionably, Quinlan conveyed to Keansburg Heights Company not only whatever was owned by him for the upland portion of what is now known as Lot 3.01, but also the area of the Riparian Grant Quinlan had acquired from the State of New Jersey in 1879 lands under water. In 1920, Keansburg Heights Company conveyed many of the lots from the aforementioned "Keansburg Heights" map along with "the property marked beach on said aforementioned map, extending from the Raritan Bay back to the lot lines and extended the entire width of the map ..." to Peter Licari in Deed Book 1111, page 6 **(Pa923)**. Licari subsequently sold this property to P. Licari, Inc. in Deed Book 1116, page 261 **(Pa925).**

The term in Deed Book 797 page 159 (Quinlin to Keansburg Heights Deed) is "together with such Riparian rights and other rights, privileges and franchises into the lands lying under the waters in Raritan Bay in front of and adjoining the above-described premises as are now vested in the party of the first part" **(Pa918)**. In the second deed, recorded in Deed Book 841-452, on page 453 **(Pa921)**, Quinlan clearly says in the deed "together with such Riparian rights and other rights, privileges and franchises into the lands lying under the waters of Raritan Bay in front of and adjoining the above-described premises as are vested in the party of the first part." Quinlan conveys not just the upland portion of the property in question along with

the "Riparian rights" that are appurtenant to it, but he also further conveys the riparian grant, meaning the lands lying under the water and extending out into the Raritan Bay. These are two separate estates in land. While a Riparian right is appurtenant to an upland portion as the Court in Panetta clearly pointed out, a Riparian Grant is not appurtenant, but is in fact a separate and distinct parcel of land. The conveyance from Keansburg Heights to Peter Licari is reflected in Deed Book 1111, page 6, **(Pa923)**. This deed clearly stated that what was being conveyed extended from the Raritan Bay back to the lot lines and extending the entire width of the map from No. 35 in Block E on the east to Lot 30 in Block C to the west. On that page, there is also a sentence which states: "Together with all and singular, the houses, buildings, trees, ways, waters, profits, privileges and advantages with the appurtenance to the same belonging or in any wise appurtenant". There is no reference to either a Riparian right, Riparian Grant or lands lying under the water but rather there is a specific reference to land which extends from the Raritan Bay back to the lot lines on the filed map. Subsequently, there is a deed from Peter Licari to P. Licari, Inc. dated June 18, 1920, in Deed Book 1116, page 261 **(Pa925)**. There is a reference to a "map of Keansburg Heights" prepared by Frank Osborn dated June 3, 1909, and filed with the Clerk of Monmouth County on June 25, 1909. The map includes according to the deed "... including all the property marked beach on sub-map extending from Raritan Bay back to the lot lines in extending the entire width

of the sub-map from Lot 35 in Block E on the east to Lot 30 in Block G on the west" (emphasis added). There is no reference in this deed to any conveyance of ownership of a Riparian right, a Riparian Grant or land lying under the water in the Raritan Bay.

Lot 3 and Lot 3.01 are assessed to the Borough of Keansburg. However, the Borough of Keansburg was never a grantee in any deed from either the State of New Jersey or from a record owner of Lot 3.01. Instead, Keansburg based its claim of ownership on a certain final tax foreclosure decree dated October 23, 1939, and recorded on October 25, 1939, in Deed Book 1806, page 403 (**Pa949**). This deed contains four tracts of land of which the fourth tract includes the following description:

> FOURTH TRACT: THE property covered by the Certificate of Tax Sale described in the fourth paragraph herein, being property located on the North side of Beachway, on the Official Tax Map of the Borough of Keansburg on the Tax Duplicate of the said Municipality particularly described as follows, viz;
>
> BEGINNING at a point in the Northerly side of Beachway, formerly known as Ocean Avenue and in the Easterly line of Property of Thomas Ryan, Inc. and Andrew Preziozi which said beginning point is the Easterly side of Lot number Twenty three and the Westerly side of Lot Number Twenty four in Block number 9 on the Official Tax Map of the Borough of Keansburg if extended Northerly to the Northerly side of said street, and from thence, running:
>
> (1) Northerly on a continuation of said line, and along the Easterly side of property of Ryan and Preziozi, be the distance what it may, to the high water line of Raritan Bay, thence;

(2) Easterly along said high water line, be the distance what it may to a one-foot reservation between **property of Licari** and Property owned now or formerly by the New Point Comfort Beach Company, thence;

(3) Southerly along said one foot reservation, be the distance what it may to the northerly side of Beachway, thence;

(4) Westerly along the Northerly side of Beachway, be the distance what it may, and following the several courses thereof, to the point or place of Beginning. Together with all Riparian rights adjoining the above-described premises.

This description relies upon calls to known references rather than an exact metes and bounds or tax lot and block. This description does not include all of the property represented as Lots 3 and 3.01 on the current tax map. It merely includes a thin strip of land located immediately north of Beachway and south of the 1918 mean highwater line as shown on the tax map in yellow **(Pa202)**. When the Borough of Keansburg brought its tax foreclosure in 1939, it named P. Licari, Inc. and other defendants **(Pa937, 946)** but failed to include Keansburg Heights Company, the fee simple owner of and successor to the 1879 tidelands grant to William J. Quinlan **(Pa917, 923)**. The final decree **(Pa946)** does reference "together with all Riparian rights adjoining the above-described premises," however, neither Peter Licari nor P. Licari, Inc. ever acquired title to the Riparian Grant; therefore, it could not have been foreclosed. Simply put, Keansburg could not acquire land from Licari that Licari did not own.

In August of 1940, the Borough of Keansburg entered into a lease from the State of New Jersey for lands owned by the State of New Jersey appurtenant and adjacent to Lot 3 only. That lease contained a State of New Jersey Board of Commerce and Navigation Map showing lands under tidewaters situate in the Borough of Keansburg leased from the State of New Jersey. That map shows the mean highwater line both as to Lot 3 as well as 3.01 showing it to be a thin strip of land running along the northwesterly line of Beachway. That document also shows "grant to William J. Quinlan, May 10, 1879" **(Pa951)**.

In 1943, the Borough of Keansburg was given a new lease which was renewed in 1954 and expired in 1969 **(Pa960)**. This lease also contained a map this time showing the former mean highwater line which again designates and only shows a thin strip of land running along Beachway which is the thin strip also shown on Lot 3.01 that being the only land owned by the Borough of Keansburg. Significantly, the 1940 map **(Pa966)** reflects the mean highwater line showing the proposed bulkhead whereas the 1954 survey shows the mean highwater line as well as the proposed bulkhead line and the later document shows the former mean highwater line and the existing bulkhead **(Pa968).** All that these leases from the State accomplished was to allow the Borough of Keansburg to bulkhead and fill past the mean highwater line, as to Lot 3 only. This was not a fee conveyance. It was a lease that was terminated of its terms and conditions. Although additional fill was

subsequently placed beyond the leased bulkhead, the beach area remains vested in the State of New Jersey as it abuts Lot 3. Quinlan did not acquire fee title to the lands underwater adjacent to Lot 3 in Block 184 via Liber E-82. The State only conveyed a 330 foot wide parcel of land under water at the east end of the Quinlan upland property (Lot 3.01). This is reinforced by the Borough applying for a lease for lands under the water north of the mean highwater line in 1940 shortly after the tax foreclosure.

Quinlan was aware that he possessed the land underwater north of Lot 3, but subsequent grantees would not have had constructive notice of said Riparian Grant because it was never recorded in the land records in Monmouth County. In 1920 when Keansburg Heights sold a portion of the map to Peter Licari under Deed Book 1111, page 6, it specifically refers to and conveys lands "on said map" along with street rights and property marked “beach” on said mentioned map extending from Raritan Bay to the lot lines. The 1879 Quinlan Grant is not depicted on the 1909 map of Keansburg Heights nor its subsequent version in 1910 (Case No. 57-8). The Deed into Licari does not claim to convey the same premises as acquired in prior deeds. A Riparian right is the right of the Riparian landowner to make reasonable use of adjacent water and is facially included in N.J.S.A. 46:3-16. Appurtenant rights might be included with a fee conveyance of a specific parcel of land. It is not intended to convey a specifically identifiable separate fee title right.

1) THE RIPARIAN GRANT QUINLAN RECEIVED IN 1879 WAS NEVER CONVEYED TO THE BOROUGH OF KEANSBURG: QUINLAN JR. CONVEYED THE RIPARIAN GRANT TO KEANSBURG HEIGHTS COMPANY IN 1909

Unlike Riparian rights, a Riparian Grant is a separate estate in land and need not be tied to the upland property. Panetta v. Equity One, Inc., 190 N.J. 307, 318 (2007). The issue in Panetta was whether a conveyance of real property that makes no mention of an abutting Riparian Grant can be construed under N.J.S.A. 46:3-16 to include that grant as an appurtenance. The family in Panetta, owned property consisting of an upland lot designated Block 934, Lot 23.01 and a Riparian Grant separately designated as Block 934, Lot 23.03. One of the owners applied for a loan from Equity One and executed a mortgage on the property designated as Block 934, Lot 23.01 for a security. The 1995 Deed for this property did not refer to the Riparian Grant designated on the tax map as Block 934, Lot 23.03. The owner defaulted on the loan and Equity One foreclosed on the mortgage. Equity One was the successful bidder and acquired the mortgaged property. Equity One subsequently initiated a closed bidding process limited to three prior bidders. Joseph Panetta submitted a bid of $255,000. Dorothy McKenna submitted a bid of $287,000 and described the property as including both the upland lot and the Riparian Grant. Anne Convey's bid was for $280,000 and included a statement that the bid was for the property with the Riparian Grant. Equity One's attorney believed a mistake had been made

and advised all parties that Equity One would reopen the bidding process on a competitive basis.

The three bidders filed complaints which were then consolidated. The trial judge concluded that Panetta had submitted the conforming bid and ordered specific performance in favor of Panetta, and deconsolidated the lawsuits. Convey filed a motion for reconsideration arguing that pursuant to NJSA 46-3-16, she was the highest conforming bidder. N.J.S.A.46:3-16 provides:

> Every deed conveying land shall, unless an exception shall be made therein, be construed to include all and singular the buildings, improvements, ways, woods, water, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof.

The Judge disagreed stating that Equity One could only convey that which it owned. The Court denied Convey's motion and reiterated that as Equity One only foreclosed on the upland property; it did not own the Riparian Grant. Convey appealed. The Appellate Division remanded the case to the trial court stating that on the record before it, it could not determine whether the Riparian rights were intended to be separate and distinct and purposely not intended to be included in the deed transfer or whether the omission of the riparian rights was a scrivener's oversight. On remand, the trial court found that the original landowner purposefully

excluded the Riparian Grant in securing the mortgage. The Judge further held that a Riparian Grant was not required to follow the upland property as a matter of law. The Appellate Division, however, reversed the judgment of specific performance in favor Panetta. It held that the Riparian Grant was included in the 1995 deed. Panetta and Covey each filed a petition for certification. New Jersey's Supreme Court reversed the Appellate Division reinstating the trial court's order of specific performance to Panetta stating:

> **A Riparian Grant is a conveyance in fee simple of real property. As such without specific mention in the deed or other evidence that the parties intended its inclusion, a Riparian Grant will not pass as appurtenant to another distinct parcel.** 109 N.J. 307, 322 (2007)

The Supreme Court stated that property not expressly included in the instrument's description, will not be covered by the mortgage. The Supreme Court believed the fact that the mortgage in Panetta did not reference the Riparian Grant at all was a clear indication of the parties' intent. Furthermore, the notice for the sheriff's sale must include a description of the property. N.J.S.A. 2A:61-1 requires the identification of the property consist of either a diagram of the premises or a concise statement indicating the municipality, the tax lot and block and the street and street number when available. The Court indicated that the description of the property in the notice for the sheriff's sale was the same as the property description

of the upland lot set forth in the 1995 deed. Accordingly, it was only this property that was included in the sale.

In the present case, the Borough of Keansburg insisted it acquired title to the Subject Property as a result of the 1939 tax foreclosure action in the Matter of *Borough of Keansburg, etc. v. P. Licari, Inc. et al.*, Fourth Tract; however, when Keansburg Heights Company conveyed property to Peter Licari in 1920, the Riparian right the State of New Jersey granted to Quinlan in 1879 was not identified or included. The Trial Court ignored this and rested its determination in large part on the "actions" of Keansburg after the Tax Foreclosure and the lack of any action of the defunct company, Keansburg Heights, in not asserting ownership. Keansburg was required to "turn square corners" and comport itself with "compunction and integrity". FMC Stores Co. v. Borough of Morris Plains, 100 N.J. 418 (1985). The fact is, if Keansburg acted as if it owned the subject property, this is not really dispositive. More relevant is the fact that Keansburg did not foreclose the Riparian Grant. The foreclosure action named P. Licari, Inc. and others as defendants but failed to include the Keansburg Heights Company, who was the fee simple owner of and successor to the 1879 Tidelands Grant to William J. Quinlan. Furthermore, the description set forth in the Final Decree dated October 23, 1939 and recorded on October 25, 1939 in Deed Book 1806 page 403 does not refer to or include all of the property represented as Lots 3 and 3.01 on the current Keansburg Tax Map.

Rather than set forth a metes and bounds description or Tax Lot and Block, the Final Decree relies upon Calls to known references. At trial, Jersey Shore's title experts Venino and Piccola emphatically stated that the description provided therein does not include all of the property represented as Lots 3 and 3.01 on the current Tax Map. This description DOES NOT include all of the property represented as Lots 3 and 3.01. It merely includes a thin strip of land located immediately North of Beachway and South of the 1918 MHWL.

Accordingly, the Borough could not take from Licari and the other named defendants' property they did not hold title to. The Riparian Grant, now referred to and identified as Block 184, Lot 3.01, was a conveyance in fee simple of real property. Much like the Riparian Grant in Panetta v. Equity One, 190 N.J. 307, 323 (2007), the Subject Property, Lot 3.01 is not appurtenant to the upland property and thus, the Borough of Keansburg never acquired title to the Subject Property. The description provided therein does not include all of the property represented as Lots 3 and 3.01 on the current Tax Map. This description DOES NOT include all of the property represented as Lots 3 and 3.01. It merely includes a thin strip of land located immediately North of Beachway and South of the 1918 MHWL. Quinlan's Riparian Grant was transferred to Keansburg Heights Co. in 1909. However, New Jersey's Supreme Court has clearly held that a Riparian Grant not identified in a deed, will not pass as "appurtenant" to another distinct parcel. The Trial Court's ruling

effectively ignores the law and presumes – contrary to the documentary evidence – that Keansburg acquired something in the foreclosure which it did not. Keansburg was required to conduct itself so as to not to achieve or preserve any kind of bargaining or litigation and advantage over a member of the public, yet it did so - during the great depression, Keansburg took advantage of a failing company and failed to foreclose on a valuable property right – the Quinlin Grant – yet, held itself out as the owner of that property.

All three witnesses called at Trial by the parties – Venino, Piccola and Eastman – were duly qualified as experts in the field and testified as such. The three witnesses were unanimous on one point, that being that there is a significant factual and legal difference and distinction between a *riparian right* and a *riparian grant.* This is significant because (as was demonstrated with Maps and aerial photographs) what today is the dry land that makes up the subject property was formerly land that was underwater but subject to a riparian GRANT. It is land artificially filled. Each witness agreed with the distinction explained by the New Jersey Supreme Court in what is the governing legal precedent. The relevant passage from that case is as follows:

> Unlike a riparian right, which is a license or a privilege, ***a riparian grant is a conveyance in fee simple of real property. As such, without specific mention in the deed or other evidence that the parties***

> ***intended its inclusion, a riparian grant will not pass as appurtenant to another distinct parcel.*** (Emphasis added).
>
> ***
>
> In short, ***a riparian grant is the conveyance of real property divided from the uplands by a fixed boundary, no different than any other conveyance of land***. *See Busby v. Rose*, 114 *N.J. Eq.* 580 (Ch. Div. 1933) (adjoining riparian tract is "distinct and separate estate"); *Moore v. Ventnor Gardens, Inc.*, 105 *N.J. Eq.* 730, 735 (Ch. 1930) (observing that mortgage of land abutting water does not included separate riparian grant), *aff'd o.b.,* 109 *N.J. Eq.* 132 (E & A 1931); *see also* 29 *New Jersey Practice, Law of Mortgages*, §5.7, at 42 (Myron C. Weinstein) 2d ed. Supp. 2005) (defining riparian grant as tract of land entirely separate and distinct from uplands).
>
> ***
>
> ... ***[A] separately assessed riparian grant is not appurtenant to abutting upland property as a matter of law.*** (Emphasis added).

[Panetta v. Equity, 190 N.J. 307 at 309, at 319 and at 324 (2007)].

Otherwise stated, from the facts of this case, unless the expert witnesses could point to a "... *specific mention in the deed or other evidence that the parties intended its inclusion* ...", then as a matter of fact and law the riparian grant at issue was not included (and was excluded) from any transfer of interest to Defendant Keansburg. Absent such proof, Defendant Keansburg never took title to the subject property. They only took title to what today is a minor, small *de minimis* strip of land on part of line-item Lot: 3.

Ultimately, what was revealed through the testimony of Jersey Shore's two experts is that there is no reasonable question but that the transfer of title from the

Keansburg Heights Company to Peter Licari did not include the term "**Riparian Grant**". Under Panetta v. Equity title in all of and the entirety of the **Riparian Grant** remained vested in the Keansburg Heights Company. This factual point could not and was not disputed. The documents themselves were clear. And while the October 23, 1939, Decree and some of the earlier documents had language that Keansburg was trying to argue supported their ownership claim, those referenced documents at best arguably only referenced riparian rights (which is not a fee simple ownership interest). They clearly did not unequivocally state that there was a transfer of **Riparian Grant**, and that the only unequivocal and valid transfer of ownership of the **Riparian Grant** at issue prior to 1939 was from Quinlan to Keansburg Heights Company grant.

When questioned on whether the specific critical term "**Riparian Grant**" was found anywhere on any of the documents of transfer after the transfer from Quinlan to the Keansburg Heights Company, Defendant Keansburg's expert Eastman testified as follows:

> Q Mr. Eastman, referring to the direct, redirect rather, we know that at a given point title came from Quinlan to Keansburg Heights, correct?
>
> A What's the page you're talking about? So, you're talking about a deed from William Quinlan?
>
> Q Deed from Quinlan to Keansburg Heights.

A Yes. **(7T70:13-21)**

***

Q Ultimately Quinlan acquired the [riparian] grant, did he not?

A Yes. **(7T71:18-21)**

***

Q Would it be fair to say that when one receives a ***riparian grant*** they are acquiring title to the land which is under the water, tidally flowed water? (Emphasis added).

A Yes. I'd say that's so. **(7T73:15-19)**

***

Q If someone acquires a ***riparian right***, does he also acquire title to land which is lying beneath the water? That's the question. (Emphasis added)

A Okay.

Q And your answer is?

A I'll think about it.

[****after a long time of several minutes of silence from the witness***]

Q Okay. Should I sit down, or could I stand here and wait?

A Oh, that depends how you feel.

Q I feel pretty good today.

A Then you can walk around a little bit.

Q Pardon?

A Then you ought to walk around a little bit.

Q Oh, come on Mr. Eastman. You and I have known each other for a long time. And your answer is?

A Oh, I thought I had an opportunity to think about it.

Q Okay. I'll sit. You let me know when you are through thinking and you can answer the question. Do you understand the question?

A I think I do.

Q Do you want it repeated?

A No, I don't want to go down that road with you.

Q Pardon?

A I said no, I'd rather give it some thought.

Q. Okay.

[Gasiorowski sits down,* and *after another embarrassingly long time of several minutes of silence from the witness*]**

***

THE COURT: Are you still thinking or is it your testimony that sitting here today you have no opinion on the question?

A ***Sitting here today I have no opinion on the question.*** (Emphasis added). **(7T74:2-75)**

***

Q Thank you. In the deeds from Keansburg Heights to Licari and from Licari to Licari, Inc., is there any reference in there or use of the word riparian grant?

A Its possible.

Q Well, do you want to read the deed and tell me where there is or there isn't? I mean, how could something be possible. It's a riparian grant. Is the word riparian grant in the deed?

A I don't know if it's in there. I don't know if it's in there or whether - -

Q Pardon?

A ***I don't know if the word is in those two deeds.***

> Q ***I'm sorry, I'm having trouble hearing. I apologize.***
>
> THE COURT: ***The answer was he does not know if that word is in those two deeds.*** (Emphasis added). **(7T75:8-24)**
>
> ***
>
> Q Well, do you think it would help - - Okay, you don't know if they're in there or not. Do you know whether or not in either of those two deeds there's a reference to land underwater being conveyed?
>
> A ***No, I don't know if they're there. So I can't answer your question.*** (Emphasis added).
>
> MR. GASIOROWSKI: Okay. I have no further question. **(7T76:2-13)**

First, Eastman admitted that "... *when one receives a* ***riparian grant,*** *they are acquiring title to the land which is under the water, tidally flowed water* ...". That is the law. But when further questioned: "*If someone acquires a* ***riparian right****, does he also acquire title to land which is lying beneath the water?"* where the answer to this question is clearly "no" by virtue of the Supreme Court's holding in Panetta after a period of silence and attempt to avoid the simple question, and unwilling to be the person that put the proverbial "nail in the coffin" of Keansburg's entire argument, Eastman finally answered: *"Sitting here today I have no opinion on the question."* Then when questioned whether the specific phrase "**Riparian Right**" is found in any of "... *the deeds from Keansburg Heights to Licari and from Licari to Licari, Inc....*" Eastman first claimed that it was "possible" that the phrase was there, but when pushed he conceded that "*I don't know if they're there. So, I can't answer your question."* The witness had the documents in front of him. The witness had the

documents for years. So, on the two critical questions in the case, Defendant Keansburg's expert witness "had no opinion on the question" and "did not know". The testimony of Plaintiff Jersey Shore's experts Piccola and Venino on these two critical points was unchallenged and is uncontested in the record.

In addition to the declaratory and equitable relief demanded in the First Count of their Complaint, in the Second Count Plaintiff Jersey Shore also demanded monetary damages seeking return all of the rent illegally collected over the years by Keansburg. However, these claims were summarily dismissed by the Court in finding that the "intent" of all the conveyances including the foreclosure was to convey both Riparian Rights and the Riparian Grant – which clearly is not the case. In doing so, the Trial Court dismissed Jersey Shore's ownership claim as well as its damages claim in the amount of $**872,916.70** based upon the lease entered into evidence.

POINT TWO

THE EASTMAN REPORT IS AN IMPERMISSIBLE LEGAL OPINION THAT SHOULD HAVE BEEN BARRED ALONG WITH EASTMAN'S TESTIMONY AT TRIAL (Pa131; 8T28:13)

Jersey Shore filed a motion *in limine* to bar Keansburg's "title" expert Eastman's report as inadmissible legal opinion (Pa77). Such a motion is used to preclude prejudicial or objectionable material before it is presented by the jury. See, Sculler v. Sculler, 348 N.J. 374, 377 (Ch. Div. 2001). N.J.R.E. 702 provides:

> If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise.

Under the New Jersey Rules of Evidence, expert testimony is admissible only where it will assist the trier of fact. It is well-established that expert witnesses simply may not render opinions on matters which involve a question of the law. See, Boddy v. Cigna Property & Cas. Companies, 334 N.J. Super. 649, 659 (App. Div. 2000) and Healy v. Fairleigh Dickinson Univ., 287 N.J. Super. 407 (App. Div.), certif. den. 145 N.J. 372, cert. den. 519 U.S. 1007 (1996). In Healy, the Appellate Division stated that "once the trial court correctly determined that the interpretation of the contract language was a legal matter, [the court] was obligated to disregard the expert's opinion concerning its interpretation." Id. See also, Marx & Co., Inc. v. Diners' Club, Inc. 550 F.2d 505 (2nd Cir.), certif. den. 434 U.S. 861 (1997) (holding that it was error for the trial court to allow a lawyer/witness to render his opinion on the legal significant of certain contract terms, and the legal obligations arising therefrom). State v. Grimes, 23 N.J. Super. 75, 79 (App. Div.) certif. den. 118 N.J. 222 (1989) (holding expert opinion is not admissible concerning the domestic law of the forum). Eastman does nothing more than offer a legal opinion as to the language of the Deeds in question. He even goes so far as to opine as to what he believes the "intent" of the language of a deed written approximately 100 years ago.

Judge Gummer denied the motion. (Pa131) The entirety of the Eastman Report from which Eastman testified is a legal opinion as to whether or not Jersey Shore or Keansburg holds legal title to Lot 3.01 and should have been stricken.

CONCLUSION

As detailed herein, and as demonstrated by the expert title testimony presented at Trial, the Borough of Keansburg never acquired or owned title to the Riparian Grant portion of Lot 3 and 3.01. As further detailed, Jersey Shore Beach and Boardwalk has now acquired title to the Riparian Grant area of those lots by the various Deeds referenced earlier. The Deeds and expert title analysis were presented at Trial and confirmed that analysis and position. Based upon the legal analysis as set further and the title proofs, it is respectfully submitted that the Trial Court was required to rule that Jersey Shore is the title owner of the Riparian Grant area of Lot 3 and 3.01. The Court should have further entered an appropriate Order directing either a refund to Jersey Shore of the rental monies paid to Keansburg on the misrepresentation of its ownership or determined the appropriate disposition or payment of said monies/funds together with reasonable interest.

Respectfully submitted:
GASIOROWSKI & HOLOBINKO
Attorney for Appellant Jersey Shore
Beach and Boardwalk Company, Inc. a/k/a
Jersey Shore Beach & Boardwalk

By: _____
R.S. GASIOROWSKI, ESQ.

JERSEY SHORE BEACH AND BOARDWALK COMPANY, INC., a/k/a JERSEY SHORE BEACH & BOARDWALK INC., Plaintiff-Appellant, v. BOROUGH OF KEANSBURG, a Municipal Corporation, Defendant-Respondent.	SUPERIOR COURT OF NEW JERSEY - APPELLATE DIVISION DOCKET NO. A-621-23 On Appeal From: SUPERIOR COURT OF NEW JERSEY - MONMOUTH COUNTY, CHANCERY DIVISION Docket No. MON-C-48-19 Sat Below: Hon. Katie A. Gummer, P.J. Ch. Hon. Joseph P. Quinn, P.J. Ch. Civil Action

BRIEF OF RESPONDENT BOROUGH OF KEANSBURG

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PRELIMINARY STATEMENT

This quiet title action was initiated by the Plaintiff-Appellant Jersey Shore Beach & Boardwalk Company Inc. a/k/a Jersey Shore Beach & Boardwalk, Inc. ("Jersey Shore") seeking a declaratory judgment that the Defendant-Respondent Borough of Keansburg (the "Borough") does not own certain portions of the real property identified on the Keansburg tax map as Block 184, Lots 3 and 3.01 (collectively, the "Property", and individually referred to as "Lot 3" or "Lot 3.01"). Significantly, the Property has been identified on the tax map as being Borough-owned since approximately 1939, no other party has paid property taxes on it since that time, and the Borough has leased portions of the Property to third parties for over sixty years, including leasing a portion of the Property to Jersey Shore from approximately 1995 to the present. During that entire time period, no other person or entity has exercised ownership rights over any portion of the Property or has objected to the Borough's open and notorious exercise of its ownership rights over the Property.

This case was tried for seven non-consecutive days in the Monmouth County Chancery Division. At trial, Jersey Shore presented title experts who testified as to why they believed the deeds of conveyance in the chain of title did not include the transfer of certain riparian lands abutting the shoreline at those times, while the Borough presented a title expert who testified as to why the deeds of conveyance in

the chain of title did include the transfer of these riparian lands. The Trial Court ultimately found that the Borough's witnesses were more credible than those presented by Jersey Shore and that Jersey Shore's argument that the deeds of conveyance in the chain of title intended to exclude these riparian lands "defies reason". 9T, p. 11. The Trial Court therefore entered an Order for final judgment dismissing Jersey Shore's Complaint with prejudice. Through this appeal, Jersey Shore seeks a reversal of that final judgment. When examined, however, the Trial Court's factual findings had clear support in the record and the Trial Court did not err in its legal analysis of the case.

Jersey Shore also argues on appeal that the Borough's title expert should have been barred from providing testimony at trial. Jersey Shore filed a pre-trial motion to bar this expert testimony and the Trial Court denied the motion without prejudice, noting that this argument would have to be evaluated in the context of the trial testimony and that Jersey Shore should re-file the motion at trial if it wanted to bar this evidence. Jersey Shore never moved to bar this testimony at trial and likewise it failed to object to the scope of the testimony provided by the Borough's expert. Consequently, Jersey Shore waived this argument and cannot pursue it on appeal. Even if the merits of the argument were considered, however, the result would be the same as (i) the Borough's expert provided testimony which assisted the Trial Court, in its role as a finder of fact, in evaluating the issues presented in this case,

and (ii) all of the parties provided testimony from title experts and the flaws (if any) in their testimony were flaws shared by all of the experts.

For the reasons set forth more fully below, the Trial Court's Order for final judgment dismissing Jersey Shore's Complaint with prejudice should be affirmed on appeal.

PROCEDURAL HISTORY

Jersey Shore initiated this action through the filing of a Complaint on or about April 22, 2019. Jersey Shore asserted three causes of action within its Complaint. The First Count of the Complaint, which was later referred to by the Trial Court as the quiet title count, sought a Declaratory Judgment under N.J.S.A. 2A:16-50 et seq. declaring that the Borough did not own the entirety of the Property and that the Borough therefore cannot evict Jersey Shore from the portion of the Property which it leases from the Borough (as defined more fully below, the "Leased Premises"). The Second Count sought a judgment requiring the Borough to refund the rents that Jersey Shore paid to the Borough during the term of its lease of the Leased Premises either to Jersey Shore or to the Court to be held in trust for some unidentified third party. Lastly, the Third Count sought entry of a judgment awarding monetary damages to Jersey Shore to compensate it for damages that it purportedly suffered

due to the alleged failure of the Borough to own the entirety of Leased Premises.[1] Pa001-Pa021.

On July 8, 2019, the Borough filed an Answer along with a Third-Party Complaint against Keansburg Heights Company ("KHC"), a defunct corporation which, according to the allegations asserted by Jersey Shore, allegedly still held ownership rights to Lot 3.01. The Borough's Third-Party Complaint asserted two claims for relief against KHC. Specifically, Count One asserted that to the extent (if at all) that KHC had retained any rights in Lot 3.01, that it forfeited those rights and that such rights passed to the Borough through the doctrine of adverse possession. Count Two asserted that principles of equity require a determination that the Borough owns the entirety of Lot 3.01 as KHC slept on any rights that it may have retained in this parcel and failed to challenge the Borough's open, notorious and adverse exercise of ownership rights over Lot 3.01. Pa022-Pa040.

KHC was served with the Borough's Answer and Third-Party Complaint by publication of legal notice in a newspaper of general circulation in Monmouth County in accordance with the requirements of the New Jersey Court Rules, as well as by posting a notice on the Property. KHC failed to file a responsive pleading to the Borough's Third-Party Complaint. Consequently, the Borough filed an

[1] Notably, Jersey Shore did not present any evidence at trial to support the claims that it asserted through Counts Two and Three of its Complaint.

application with the Clerk seeking the entry of default against KHC. On October 17, 2019, the Clerk entered default against KHC. See Pa043-Pa044.

The litigation was originally assigned to the Honorable Katie Gummer, P.J., Ch., the Monmouth County Chancery Division judge at that time, for handling. She entered a series of orders establishing a discovery schedule. During the discovery process, the Borough issued an expert report from Edward Eastman, an attorney who is an expert in title issues, in order to rebut the expert reports issued by Richard Venino (also an attorney) and George Piccola (a title searcher) on behalf of Jersey Shore regarding the title issues in this case.

On April 6, 2020, Jersey Shore subsequently filed a motion to bar the testimony of the Borough's title expert Edward Eastman which the Borough opposed. On May 8, 2020 Judge Gummer heard oral argument on Jersey Shore's motion to bar this expert testimony. See 8T. After considering the arguments counsel, Judge Gummer denied Jersey Shore's motion without prejudice to its renewal at trial. 8T, p. 21, lines 21-23 and p. 28., lines 13-15. In making this decision, Judge Gummer noted that

> . . . it would be inappropriate for the Court at this time to bar defendant's expert without having heard presentation of testimony by the plaintiff's expert, if in fact defendant's expert has been submitted to rebut that of plaintiff's expert. The plaintiff's expert could simply be limited to the subject area that Mr. Gasiorowski has outlined, or it could factor into areas about which, about which Mr. Eastman has opined. And I simply cannot make that determination here before trial.

> Now, and as, also as counsel for the defendant points out there may be factual issues about which Mr. Eastman's opinion would be permissible under Rule 702. The Court cannot now before trial make a determination as to what those factual issues may be before trial.
>
> 8T, p. 27, lines 22-25 and p. 28, lines 1-6.

For these reasons, Judge Gummer denied Jersey Shore's motion without prejudice to the motion being renewed at trial. Subsequently, on May 11, 2020, Judge Gummer entered an Order denying Jersey Shore's motion to bar this expert testimony without prejudice. Pa131.

This case was subsequently re-assigned to the Honorable Joseph P. Quinn, P.J. Ch. (the "Trial Court" or "Judge Quinn") who oversaw the conclusion of discovery, the schedule for the submission of trial briefs, and the trial itself. A bench trial was held before Judge Quinn on seven non-consecutive dates starting on November 3, 2021, and concluding on April 25, 2023. See 1T-7T. Judge Quinn then required the parties to submit post-trial briefs and those briefs were filed with the Trial Court in June of 2023. 9T, p. 3, lines 12-13.

On September 25, 2023, the Trial Court issued an Order for final judgment dismissing Jersey Shore's Complaint in its entirety, concluding that Jersey Shore ". . . has no interest in the subject property and the property was fully conveyed to the Borough who holds Title to the property." Pa1088. On that same date, the Trial Court issued an oral opinion providing his findings of fact and conclusions of law supporting the entry of final judgment dismissing Jersey Shore's claims. 9T.

On October 20, 2023, Jersey Shore filed a Notice of Appeal from the May 11, 2020, Order of Judge Gummer as well as from the Order of final judgment dismissing Jersey Shore's Complaint entered by Judge Quinn on September 25, 2023. Pal072.

STATEMENT OF FACTS

The Appellant herein, Jersey Shore, is the owner of a property which is identified on the Keansburg tax map as Block 184, Lot 4 ("Lot 4"). Jersey Shore operates the Keansburg Amusement Park on Lot 4. As suggested by the lot numbering, the amusement park is directly adjacent to the Property (i.e. Lots 3 and 3.01) which is the subject of this litigation.

As set forth more fully below, since approximately 1995, Jersey Shore has leased a portion of the Property, which as defined more fully below is characterized herein as the Leased Premises, from the Borough and has used the Leased Premises for a go-kart track and other uses related to its amusement park.

The Property is one of a number of parcels along the bayfront in Keansburg which are part of the Beachway Avenue Waterfront Redevelopment Area, a redevelopment area designated in accordance with the Local Redevelopment and Housing Law. Jersey Shore has filed a series of lawsuits against the Borough challenging the Borough's efforts to redevelop this redevelopment area. While this

litigation is not directly challenging any redevelopment action taken by the Borough, its apparent purpose is to impede the redevelopment of the redevelopment area.

Through this litigation, Jersey Shore alleges that the Borough does not own the entirety of the Property (and the entirety of the Leased Premises) and that certain riparian lands abutting the historic shoreline of the Property were never conveyed to the Borough.[2] Both parties presented witnesses regarding the chain of title of the Property. The Borough also presented witnesses, who were unrebutted by any affirmative testimony from Jersey Shore, regarding the historic uses of the Property.

A. The Chain Of Title Of The Property

The testimony and evidence presented at trial revealed the following information regarding the chain of title of the Property.

On or about March 18, 1871, William Quinlan acquired title to certain lands located within the Borough, including the uplands portion of what is now designated

[2] Although Jersey Shore contends that the Borough does not own all of the Property, it never delineated through a survey or a legal description what it alleges the Borough owns and what it alleges the Borough does not own. Rather, Jersey Shore's title experts conceded during their testimony that the Borough obtained rights in some portion of what is now Lot 3 spanning from the boundary of Lot 1 to within one foot of the boundary of Lot 4 (in other words, spanning the entire shoreline of this parcel from the boundaries of the two adjoining lots), and that they could not provide any opinion or delineate to the boundaries of what portion of Lot 3 the Borough owns and what portion of Lot 3 the Borough allegedly does not own (1T, pp. 110-111; 2T, pp. 47-48 and pp. 50-51). This was a fatal flaw in the Plaintiff's case as it had the burden of proof in this quiet title action to delineate any portions of the Property which it alleges that the Borough does not own.

on the Borough tax map as Lot 3. Mr. Quinlan subsequently acquired title to the adjacent riparian lands which were then underwater through purchasing a riparian grant from the State of New Jersey on May 10, 1879. Pa0911-Pa0916. Thus, as of May 10, 1879, Mr. Quinlan owned both the uplands and the adjoining riparian lands of what is now collectively the Property. Id.

On January 15, 1909, Quinlan conveyed certain lands, including the lands that are now the Property, to KHC. Pa0917-Pa0921. Notably, the deed from Quinlan to KHC included a legal description which was limited to the upland property that was being conveyed. To the extent that the riparian land (i.e. the riparian tract that Quinlan had obtained from the State, hereinafter the "Quinlan Tract") was also conveyed, that was accomplished through a sentence contained in the deed after the legal description of the uplands which indicated that the conveyance also included "such riparian rights and other rights, privileges and franchises in and to the lands lying under the waters of Raritan Bay in front of and adjoining the above-described premises as are vested in" Mr. Quinlan. Pa0918.

KHC subdivided the uplands portions of the tract of land that it acquired from Quinlan into separate lots as shown on the map entitled "Map of Keansburg Heights" filed on June 25, 1909 as Map Case #36-19. Pa0922.

KHC subsequently conveyed the following tract of these subdivided lots to Peter Licari, who at the time was an employee of KHC and was its registered agent, through a deed dated April 6, 1920:

> All those certain lots, tracts or parcels of land or premises . . . which on a certain map entitled, "Map of Keansburg Heights, N.J." made by Frank Osborn, Surveyor, dated June 3, 1909 and filed in the office of the Clerk of Monmouth County on June 25, 1909, are known and designated as Blocks "D" and "G", and all right, title, and interest of party of first part in the streets, roads and avenues of said map and including the property marked beach on said above mentioned map, extending from the Raritan Bay back to the lot lines and extending the entire width of the map from lot no. 35 in Block E on the east to Lot No. 30 in Block G on the west.

See Pa0923.

Like the deed from Quinlan to KHC, the deed from KHC to Licari did not expressly include riparian lands within the legal description of the tract being conveyed. Rather, like the deed from Quinlan to KHC, the deed from KHC to Licari contained language after the legal description as to the following appurtenant property rights that were also being conveyed:

> Together with all and singular, the houses, buildings, trees, ways, **waters**, profits, privileges, and advantages, with the appurtenances to the same belonging in or in anywise appertaining;
>
> Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in, and to the same, and of, in and to every part and parcel hereof . . .

See Pa0923 (emphasis added).

Additionally, the deed from KHC to Licari was a warranty deed which provided, in pertinent part, that:

> [T]he said party of the first part [i.e. KHC] will warrant, secure, and forever defend the said land and premises unto the said party of the second part [i.e. Licari], his heirs and assigns, forever, against any lawful claims and demands of all and every person or persons fully and clearly freed and discharged of and from all manner of encumbrances whatsoever.

See Pa0924. By providing Licari with a warranty deed, KHC agreed to warrant and defend the property conveyed against any future title claims.

Approximately two months later, on June 16, 1920, Licari transferred the tract that he had acquired from KHC to P. Licari, Inc. Pa0925-Pa0926.

Approximately nineteen years later, the Borough initiated a foreclosure action against P. Licari, Inc. which resulted in the issuance of a Final Decree entering judgment in favor of the Borough. Pa0927-Pa0949. While the Final Decree, like every other deed within the chain of title for this Property, included a legal description of the uplands acquired through the foreclosure judgment, it expressly indicated that the acquisition of these property rights was ". . . together with all riparian rights adjoining the above described premises". Pa0949.

As described in more detail in the Legal Argument sections below, the Borough's title expert, Edward Eastman, Esq., testified at trial that the intent of all of the conveyances in the chain of title, including both the conveyance from Quinlan to KHC and the later conveyance from KHC to Licari, was to include the riparian

land known as the Quinlan Tract. Pa085. Jersey Shore's title experts, on the other hand, testified that the conveyance from KHC to Licari did not include the Quinlan Tract, and that instead for some unexplained reason, KHC retained the Quinlan Tract even though such land was underwater at the time and there was no way to access it (other than by boat) if the abutting uplands were sold. As also set forth more fully within the Legal Argument sections below, Jersey Shore's argument is not supported by the language in the deeds in the chain of title and is inconsistent both with common sense and with the subsequent history of the use of the Property in that the Borough has openly and notoriously acted as the owner of the entire Property since it acquired title to the Property in 1939. KHC, on the other hand, has not taken any actions since its conveyance of the tract to Licari in 1920 to indicate that it retained any ownership rights in the Quinlan Tract.

B. The Historic Use Of The Property

The Borough presented unrebutted testimony at trial regarding the historic use of the Property which further supports the Borough's position in this litigation. Significantly, the Borough has continuously held itself out to be the owner of the entire Property since 1939 (the date when it obtained the final decree in the tax sale foreclosure action). This ownership has been demonstrated in multiple ways.

A portion of Lot 3 has been used as a municipal public parking lot since at least the early 1950s. In May of 2019, the Tidelands Resource Council approved a

license for the portions of the parking lot property that qualify as State tidelands granting the Borough a prospective license for the use of these tidelands from May 1, 2019 to May 1, 2034 along with the retroactive approval to use these tidelands from 1967 to May 1, 2019. The tidelands license requires the Borough to pay rent to the State in specified amounts during the term of the license. Pa1011-Pa1014. During the trial, the Borough presented evidence from Robert Yuro, an engineer from T&M who serves as the Borough's engineering consultant, indicating that the Borough had applied for a tidelands grant for the portions of the municipal parking lot property which are encumbered by tidelands and that the Tidelands Resource Council had approved the Borough's grant application on December 7, 2022. 5T, p. 87, lines 23-25.

The remainder of Lot 3 consists of a beach and boardwalk area operated by the Borough and vacant land which, as described below, has been leased by the Borough for years to various third parties over a period of years, and which is currently a portion of the Leased Premises being leased by the Borough to Jersey Shore as a site for go-kart tracks and concessions for Jersey Shore's amusement park.

1. The Alteration Of The Property And The Construction Of Bulkheads

Aerial photography shows that as early as 1940—only one year after the Borough obtained title to the Property via the final decree in the foreclosure action—the Borough installed a bulkhead which extended the uplands portions of the

Property and which modified the established mean high-water line of the Property. Pa341. This bulkhead was constructed by the Borough pursuant to a lease between the Borough and the State of New Jersey dated August 8, 1940 which indicated that the Borough would have the right to construct a bulkhead for the purpose of improving and maintaining this area as a ". . . public park, highway or place for public use, resort and recreation." Pa0953.

Notably, the improvements installed by the Borough, including the fill brought onto the Property to extend it out into the water and the installation of the bulkhead, went the entire width of the parcel (i.e. the entire width of Lot 3 and into Lot 3.01, the tax lot showing the Quinlan Tract). 5T, p. 27-31. The Borough would not have made these improvements if it did not believe that it owned the entire Property, and likewise the NJDEP would not have granted a license to the Borough to make these improvements if the NJDEP did not believe that the Borough owned the Property.

The 1940 lease between the Borough and the State was subsequently canceled for violation of the restrictive park covenant. Pa0951-Pa0959. Following this cancellation, the Borough obtained another 15-year lease from the State in 1943 for this area. Pa0960-Pa0967. The 1943 Lease included the "right and privilege. . . to exclude the tidewater, from so much of the lands above described as lie underwater, by filling in or otherwise improving the same, and to appropriate lands under water

above described to its and their exclusive use as a public park, highway or place of public use, resort, and recreation . . .". Pa0962. Aerial photography from 1947 shows that the Borough exercised this right and filled the tidewater and constructed another bulkhead. Pa0341; 5T, Pp. 37-38. Thus, property that was once underwater became filled uplands due to these projects and the shoreline extended further out into the bay.

2. The Lease Of Portions Of The Property To Third Parties

In addition to depositing fill and constructing bulkheads on the Property, the Borough has also leased portions of the Property to third parties. For example, a map of the area from 1952 includes a notation that portions of Lots 3 and 3.01 were "leased by the Borough . . . to the New Point Comfort Beach Company" (the entity which then operated the Keansburg Amusement Park). Pa0968. Additionally, the Borough subsequently leased a portion of the Property to Grandal Enterprises, Inc. (a later operator of the Keansburg Amusement Park) from June 29, 1981 to December 1, 1991. Pa343.

Finally, the Borough leased portions of the Property (the Leased Premises) to Jersey Shore from 1995 through the present. According to the testimony at trial, while the characterization of lot numbers included in the Leased Premises changed in some of the lease documents, that was just a change in nomenclature and the actual area of the Property which was leased by the Borough to Jersey Shore has never

changed from 1995 to the present. Specifically, the Borough Clerk/Borough Tax Collector Thomas Cusick testified that:

> (i) the Leased Premises were described on the 1995 Lease as a portion of Block 184, Lot 3 and were delineated on a sketch attached to the bid specifications (4T, pp. 32-33 and 36-37 and Pa0969-Pa0981 and Pa982-Pa991);
>
> (ii) in the 1999 Lease, the Leased Premises were likewise described as a portion of Block 184, Lot 3 (4T, pp. 36-39 and Pa0992-Pa0999 and Pa1000-Pa1005);
>
> (iii) in the 2012 Amendment, the Leased Premises was described as a portion of Block 184, Lot 3.01, but Mr. Cusick believed that this change in the lot numbering designation of the Leased Premises was merely intended to distinguish the portion of the property being leased to Jersey Shore from the remainder of Lot 3 (4T, pp. 39-41 and Pa1027-Pa1032);
>
> (iv) despite the different lot numbering used in the description of the Leased Premises in the 2012 Amendment, the dimensions and locations of the portion of the property being leased by the Borough to Jersey Shore has not changed and in fact is the same dimensions and location as the property previously leased by the Borough to Grandal Enterprises (4T, pp. 33, 41).

Additionally, Michael Finnegan, a surveyor from the Borough Engineer's office, testified that approximately three quarters of the Leased Premises (which he characterized in this testimony as the go-kart track) is located on Lot 3, while approximately one quarter of the Leased Premises is on Lot 3.01. 5T, pp. 22-23.

The initial Lease between the Borough and Jersey Shore was entered after a public procurement process in which the Borough sought proposals for the lease of a portion of the Property. Pa0982-Pa0991. Jersey Shore was the highest bidder for

these proposed lease rights so, in May of 1995, the Borough and Jersey Shore entered into a Lease Agreement for the Leased Premises (the "1995 Lease"). Pa0969-Pa0981. The 1995 Lease was for an initial 5-year term with an option to renew the lease for two additional 5-year terms. Pa0969, Section 2.

In 1999, Jersey Shore advised the Borough that Jersey Shore was interested in seeking an extension to the term of the 1995 Lease (which was then due to expire in 2010 if all of the renewal options were exercised). Since the 1995 Lease had been procured through a competitive open public process as required under the Local Lands and Buildings Law, N.J.S.A. 40A:12-1 et seq., the Borough engaged in a second competitive open public procurement process in 1999 soliciting bids for the lease of the Leased Premises for an initial 5-year term expiring in 2005 with the option of up to four renewals for subsequent 5-year terms which, if exercised, would result in the Lease expiring in May of 2025. Jersey Shore was again the highest bidder under that competitive open public process. Pa1000-Pa1005.

Consequently, on May 14, 1999, the Borough and Jersey Shore entered into a new lease agreement for the Leased Premises which superseded and replaced the 1995 Lease Agreement (the "1999 Lease"). Pa0992-Pa0999. The 1999 Lease allowed Jersey Shore to use and occupy the Leased Premises during the lease term for any use permitted under the Zoning Ordinance of the Borough, including but not limited to Boardwalk type amusements, miniature golf courses and the like. Pa0993,

Section 4. The 1999 Lease required Jersey Shore to construct male and female lavatories on the Leased Premises and to install a fence around the Leased Premises. Pa0993-Pa0994, Section 5. It also required Jersey Shore to submit drawings of any structures or improvements that Jersey Shore sought to install on the Leased Premises and to obtain Borough approval for them prior to their installation. Pa0994, Section 6. As consideration for the use and occupancy of the Leased Premises, the 1999 Lease required Jersey Shore to pay the Borough rent at a fixed rate for the first 5-year term and then with rent escalations for each subsequent 5-year renewal of the Lease. Pa0993, Section 3. Lastly, upon the expiration or termination of the Lease, Jersey Shore was obligated to vacate the Leased Premises, to remove at its own expense all improvements that it had installed on the Leased Premises, and to restore the Leased Premises to its condition prior to the execution of the Lease. Pa0997, Section 12.

Jersey Shore is still using and occupying the Leased Premises under the 1999 Lease. In 2010, however, a dispute arose between the parties as to whether Jersey Shore had properly exercised its option to extend the Lease. As the parties could not resolve this dispute, Jersey Shore filed litigation against the Borough entitled Jersey Shore Beach and Boardwalk Company v. Borough of Keansburg, Docket No. MON-C-165-10 seeking a ruling from the court that the Lease was still in effect. After this litigation was filed, the parties resolved this dispute and entered into a Settlement

Agreement and Lease Amendment in February of 2012. Pa1027-Pa1032. The 2012 amendment to the Lease (the "2012 Amendment") indicates that the provisions of the 1999 Lease shall remain in full force and effect except for those specific provisions that were modified through the 2012 Amendment. Pa1027, Section 1. These modifications included, among other things, revisions to allow the Borough to terminate the Lease if certain defined Redevelopment Events occurred within the redevelopment area, revisions to the procedures for serving notices on the parties, and the inclusion of requirements for setting aside parking spaces for Green Acres parking and for parking by Jersey Shore customers. Pa1029-1030.

Significantly, each time that the Borough engaged in a public procurement process regarding the lease of the Leased Premises to Jersey Shore, the Borough represented that it was the owner of the Leased Premises. Pa0982-Pa0991 (Resolution No. 56 adopted 1995 indicating that "The Borough of Keansburg is the owner of certain real property designated as a portion of Block 184, Lot 3 on the Tax Map of the Borough of Keansburg and described as "Block 184, part of Lot 3" as outlined on the sketch on file in the Borough Clerk's office"); Pa1000-Pa1005 (Resolution No. 55 adopted 1999 indicating that "The Borough of Keansburg is the owner of certain real property known as a portion of Lot 3 in Block 184 as shown on the Tax Map of the Borough of Keansburg and more particularly described in Schedule A annexed hereto . . . which property pursuant to public bid is currently

under lease until 2010"). Jersey Shore never challenged the Borough's ownership of the Leased Premises. Rather, Jersey Shore submitted responses to each of the Borough's procurement requests and entered into lease agreements with the Borough for the Leased Premises.

3. The Inclusion Of The Property On The Borough's Tax-Exempt Lists

Additionally, during the time period from 1939 to the present, the Property was identified in the Borough tax records as being a Borough-owned tax-exempt property. Pa0869-Pa0899. For that reason, no other person or entity paid property taxes on the Property. 4T, p. 29, lines 16-17. Likewise, from 1920 (the date that KHC sold the tract which includes the Property to Peter Licari) to the present, KHC did not do anything to exercise any ownership rights over any portion of the Property, and did not object in any way to the Borough's open and notorious exercise of ownership rights over the Property.

C. The Quitclaim Deeds

At the time that Jersey Shore filed its Complaint initiating this quiet title action in April of 2019, Jersey Shore did not have any rights in the Property other than its leasehold right to use and occupy the Leased Premises. Instead, Jersey Shore alleged within its Complaint that the Borough did not own the entirety of the Property and that portions of the Property were owned either by the State of New Jersey (which has rights in any tidelands that were not conveyed through grant to others) or by

KHC (which allegedly had retained title to the Quinlan Tract despite conveying the uplands abutting the Quinlan Tract to Licari in April of 1920). See Pa001-Pa021.

After the pleadings in this action were filed, however, Jersey Shore supplied the Borough with a number of quitclaim deeds which it obtained from some of the alleged heirs of the former members of KHC. Pa283-Pa340. As a result of these quitclaim deeds, Jersey Shore contended at trial through the testimony of Melissa Johnson (a genealogist) and Richard Venino (who not only testified as Jersey Shore's title expert but also testified that he represented Jersey Shore in its negotiation and procurement of the quitclaim deeds), that Jersey Shore now owns Lot 3.01 (and that it therefore also owns some un-delineated portion of the Leased Premises). See generally 3T.

Additional facts relevant to the arguments on appeal will be addressed within the Legal Argument below.

LEGAL ARGUMENT

POINT I

THE TRIAL COURT'S ORDER DISMISSING JERSEY SHORE'S COMPLAINT AND DETERMINING THAT THE BOROUGH OWNS THE PROPERTY WAS SUPPORTED BY THE RECORD AND BY APPLICABLE LAW

The Trial Court's review of the history of chain of title for the Property led it to determine that the Borough "legally obtained all interest in the subject property" which is at issue in this litigation and that Jersey Shore's claims were without merit

and should be dismissed. See 9T, p. 8. The chain of title for this Property goes back over 150 years. Although this history is both long and complex, the underlying legal principle of any land conveyance is the same principle that applies to any contract interpretation—to determine and to give effect to the intention of the parties. When the conveyance documents in the chain of title are examined using this guiding legal principle, is it clear that the Trial Court did not err in dismissing Jersey Shore's Complaint and in holding that the Borough is the owner of the Property.

A. The Appellate Division Should Defer To The Trial Court's Factual Findings And Its Findings As To The Credibility Of Witnesses

In reaching its decision dismissing Jersey Shore's Complaint and determining that the Borough is the owner of the Property (including the Quinlan Tract), Judge Quinn made multiple factual findings about the persuasiveness of the evidence and about the credibility of the witnesses presented by the parties at trial. Judge Quinn noted in his oral opinion that ". . . while the experts had differing opinions in the case, those are matters that really require the Court, as the finder of fact, to make a determination with respect to which opinion more credibly relies on the facts in the case." 9T, p. 4, lines 18-22. He then went on to make the following findings:

- In evaluating the testimony of the title experts presented by the parties, Judge Quinn indicated that he found ". . . the testimony of Mr. Eastman with regard to the title issues to be more credible than those asserted by Mr. Piccolo and Mr. Venino." 9T, p. 4, lines 18-22.[3]

[3] In evaluating the credibility of the title experts, Judge Quinn may also have been influenced by the fact that one of Jersey Shore's title experts, Richard Venino,

- Later, when analyzing the issue of whether the riparian grants and riparian rights were transferred with the uplands, as shown through the deeds and the history of use of the Property, Judge Quinn again indicated that he ". . . found Mr. Eastman's testimony in that regard to be significantly more believable than the testimony of Mr. Venino and Mr. Piccolo. 9T, p. 12, lines 13-15.

- When examining and rejecting Jersey Shore's claim that it has an ownership interest in a portion of the Property, Judge Quinn concluded that Jersey Shore has ". . . no ownership interest in the disputed parcels" and that he ". . .found more credible the testimony of Mr. Eastman in this regard." 9T, p. 15, lines 18-20.

- Judge Quinn went on to say ". . . it clearly is the Court's view that the intent of these conveyances was to convey both the riparian grants and the riparian rights. The view to the contrary kind of defies reason. It is unlikely that there would have been the retention of lands underwater without having the uplands and the adjoining properties. In fact there would have been no practical way to access riparian lands under water. So it just doesn't seem logical that they would have retained any interest in the riparian grant property. And the Court finds that it clearly was the intent incorporated into these deeds to obtain all of the property interest of, and convey all of the property interest and not retain any interest in the subject property." 9T, p. 11, lines 9-22.

- Judge Quinn also found that the position of Jersey Shore that the riparian grant was not conveyed with the uplands ". . . flies in the face of the reality of actions. Keansburg Heights Company, long defunct, took no action once it sold the property to Licari. And Licari took no action thereafter. When I say no action, no action to assert an ownership interest. Importantly, they never claimed an ownership interest. They never paid taxes on property since the 1920s." 9T, p. 12, lines 18-25.

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was not an impartial and unbiased expert. The testimony revealed that Mr. Venino served as Jersey Shore's attorney and, in that capacity, he negotiated with KHC's heirs and procured quitclaim deeds from those heirs. Thus, he had a vested interest in defending the propriety of the quitclaim deeds that he procured on behalf of Jersey Shore as those deeds would only be valid if his position on these title issues was accepted by the Court.

- Judge Quinn similarly noted that it ". . . just does not seem credible to the Court that the plaintiffs' assertion of ownership through the heirs of Keansburg Heights Company, through quit claim deeds, is valid. It seems to be contrary to the intent of the parties at the time of the conveyances. It seems to kind of defy the common sense review of how the property has been handled since the time of the foreclosure action by the Borough." 9T, p. 14, lines 3-10.

- For all of these reasons, Judge Quinn concluded that ". . . the plaintiffs' position is not persuasive to the Court." 9T, p. 8, lines 5-6.

These are all examples of factual findings or credibility findings made by the Trial Court. As Judge Quinn had the benefit of hearing and evaluating these witnesses during the seven-day trial held in this case, his factual findings and credibility findings are entitled to great deference.

The law is clear that appellate courts apply a deferential standard in reviewing factual findings by a judge. Balducci v. Cige, 240 N.J. 574, 595 (2020); State v. McNeil-Thomas, 238 N.J. 256, 271 (2019). In an appeal from a non-jury trial, appellate courts "give deference to the trial court that heard the witnesses, sifted the competing evidence, and made reasoned conclusions." Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015). Deference is given to credibility findings. State v. Hubbard, 222 N.J. 249, 264 (2015). "Appellate courts owe deference to the trial court's credibility determinations as well because it has 'a better perspective than a reviewing court in evaluating the veracity of a witness.'" C.R. v. M.T., 248 N.J. 428, 440 (2021) (quoting Gnall v. Gnall, 222 N.J. 414, 428 (2015)).

The Supreme Court of New Jersey has recently stated that "[a] reviewing court must accept the factual findings of a trial court that are "supported by sufficient credible evidence in the record."" State v. Mohammed, 226 N.J. 71, 88 (2016) (quoting State v. Gamble, 218 N.J. 412, 424 (2014)). The Supreme Court has also said that "[r]eviewing appellate courts should 'not disturb the factual findings and legal conclusions of the trial judge' unless convinced that those findings and conclusions were 'so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" Griepenburg v. Twp. of Ocean, 220 N.J. 239, 254 (2015) (quoting Rova Farms Resort, Inc. v. Invs. Ins. Co. of Am., 65 N.J. 474, 484 (1974)).

Here, the factual findings and credibility findings made by Judge Quinn do not offend the interests of justice. To the contrary, they are supported by the record at trial. For that reason, these findings are entitled to deference and should not be disturbed on appeal.

B. The Trial Court's Analysis Of The Legal Issues In This Case Was Consistent With Applicable Law

The Griepenburg v. Twp. of Ocean case cited above suggests that an appellate court should also defer to the legal conclusions of a trial judge. Even if no such deference is given, however, the Trial Court's Order of final judgment should still be affirmed because Judge Quinn's decision was supported by the record and was consistent with applicable law.

In his oral opinion, Judge Quinn honed in on the key issue in the case, which was whether the parties in the chain of title intended to convey the riparian grants and riparian rights abutting the uplands when they conveyed the uplands to the next party in the chain of title. Judge Quinn correctly noted that the answer to this question turned on the intent of the parties, and that the deeds have ambiguous language since the deeds neither expressly reference the Quinlan Tract and indicate that there was an intent to convey it, or expressly exclude the Quinlan Tract from what was conveyed. 9T, p. 12.

In order to properly evaluate these claims, it is first necessary to review the law applicable to land conveyances in New Jersey.

1. The Intent Of The Parties

First and foremost, "[i]n construing a deed, the court must undertake to determine the intention of the parties. If that intention is not clear on the face of the deed, the court may consider extrinsic evidence to resolve any ambiguity." Boylan v. Borough of Point Pleasant Beach, 410 N.J. Super. 564, 569 (App. Div. 2009). Thus, the intent of the parties is the guiding principle in determining what property rights were conveyed.

Notably, under New Jersey law, deeds are "construed to include all the [grantor's] estate, right, title, interest, use, possession, property, claim and demand" unless the grantor expressly limits the conveyance. N.J.S.A. 46:3-13. In other

words, the presumption is that the grantor is conveying all of its rights in the real property unless it expressly limits the conveyance.

Moreover, N.J.S.A. 46:3-16 provides that:

> Every deed conveying land shall, unless an exception shall be made therein, be construed to include all and singular the buildings, improvements, ways, woods, waters, watercourses, rights, liberties, privileges, hereditaments and appurtenances to the same belonging or in anywise appertaining; and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and of every part and parcel thereof.

Thus, property rights that are appurtenant to the dominant estate automatically pass with the conveyance of the dominant estate even if they are not expressly mentioned within the deed of conveyance unless an exception is made to their passing.

2. The Difference Between Uplands And Riparian Lands

The term "riparian" means "[o]f, relating to, or located on the banks of a river or stream (or occasionally another body of water, such as a lake)." Black's Law Dictionary 1352 (8th ed. 2004); 6 Waters and Water Rights 1290 (Robert E. Beck, ed., 1991, repl. vol. 2005). Thus, riparian lands are lands lying along the banks of a stream or water body. Water and Water Rights, supra, at 1290; Black's Law Dictionary 893-94 (8th ed. 2004). The term "uplands", on the other hand, refers to lands that are not riparian lands, and is often used to refer to the lands that are directly adjacent to riparian lands.

Riparian doctrine declares that:

> [O]wners of lands along the banks of a stream or waterbody have the right to reasonable use of the waters and a correlative right protecting against unreasonable use by others that substantially diminishes the quantity or quality of water. The right is viewed as a property interest or as appurtenant to the land and does not depend on prior use.

Water and Water Rights, supra, at 1290; see also, Black's Law Dictionary 1352 (8th ed. 2004) (defining "riparian-rights doctrine" as "[t]he rule that owners of land bordering on a waterway have equal rights to use the water passing through or by their property").

Although the owners of lands along the banks of a stream or waterbody have the right to the reasonable use of the waters, New Jersey law provides that "[t]he State owns in fee simple all lands that are flowed by the tide up to the high-water line or mark." O'Neill v. State Highway Dep't., 50 N.J. 307, 323 (1967). Thus, unless the State conveys these rights away, it has ownership rights in all tidally-flowed riparian lands up to the high-water line.

The State may convey its riparian rights in tidally-flowed lands to others in different ways. First, the State may enter into a license or lease for such riparian lands providing a person or entity with a temporary right to use the riparian lands. Additionally, the State has the right to convey fee ownership of tidally-flowed riparian lands through a riparian grant. See N.J.S.A. 12:3-7; N.J.S.A. 12:3-10; Dickinson v. Fund for Support of Free Public Sch., 95 N.J. 65, 79 (1983) (recognizing legislative authorization for Tidelands Resource Council to convey and

lease riparian lands). While current regulations require that the State must first offer the riparian grant to the owner of the adjoining uplands, if that uplands owner declines to acquire it, the riparian land may thereafter be conveyed to persons who are unconnected to the upland property. See N.J.S.A. 12:3-23.

3. The Panetta Decision

Until relatively recently, the issue of whether a riparian grant passes automatically with the uplands was unsettled. As recently as 2005, the Appellate Division held that that granted riparian land would be automatically conveyed with the adjoining uplands parcel even though it was not specifically referenced within the deed of conveyance. See Panetta v. Equity One, Inc., 378 N.J. Super. 298, 315 (App. Div. 2005), rev'd, 190 N.J. 307 (2007).

In 2007, however, the Supreme Court of New Jersey resolved this uncertainty. The Supreme Court found that a riparian grant is a separate and distinct interest in land and it therefore is not an appurtenant right in land that is conveyed automatically as part of the dominant estate. Panetta v. Equity One, Inc., 190 N.J. 307 (2007). The Supreme Court noted, however, that a riparian grant can pass with the conveyance of the uplands property despite not being expressly mentioned in the deed if there is "evidence that the parties intended its inclusion". Panetta, 190 N.J. at 307. This is consistent with the guiding principle of deed interpretation described above, which

is that the intention of the parties controls the property rights that are conveyed within a deed.

Jersey Shore relies heavily on the Panetta decision in support of its argument that the Quinlan Tract was not conveyed with the uplands, arguing that the Quinlan Tract is not specifically mentioned either by name or by legal description in any of the deeds of conveyance. Jersey Shore likewise argues that Judge Quinn mis-applied the law because he concluded that the Quinlan Tract was conveyed with the uplands. Jersey Shore seems to ignore, however, the portion of the Panetta opinion holding that a riparian grant may still be conveyed with uplands if there is "evidence that the parties intended its inclusion". Panetta, 190 N.J. at 307. Jersey Shore also ignore the fact that Judge Quinn concluded that there evidence of an intent by the parties in the chain of title to convey the riparian grant/riparian rights with the uplands. Since Judge Quinn found that there was evidence in the record that the parties intended to include the riparian grant/riparian rights when the uplands were conveyed, Judge Quinn's legal analysis is consistent both with the Panetta decision and with applicable law regarding the interpretation of deeds.

C. The Evidence Presented At Trial Supports The Trial Court's Finding That The Borough Owns The Entire Property

Any review of the ownership of this Property must begin in 1871 when William Quinlan acquired title to certain lands located within the Borough, including the uplands portion of what is now designated on the Borough tax map as Lot 3. In

1879, Quinlan then acquired title to the adjacent riparian lands which were then underwater through purchasing a riparian grant from the State of New Jersey (the "Quinlan Tract"). While the Quinlan Tract was later designated on the Borough tax map as Lot 3.01, witnesses testified at trial and Judge Quinn found that Lot 3 was the only actual tax lot, while Lot 3.01 was a simply a designation that was made on the tax map in order to delineate the portion of Lot 3 and of the waters adjacent to Lot 3 which were part of this riparian grant. See Exhibit 9T, p. 5. Thus, as of 1879, Quinlan owned both the uplands of what is now known as Lot 3 as well as the abutting underwater riparian lands.

On January 15, 1909, Quinlan conveyed certain property rights to KHC. See Pa0917-Pa0921. Notably, the legal description in the deed for the conveyance was limited to the upland property and did not expressly include any riparian lands within the boundaries of the legal description. However, the Borough's title expert, Edward Eastman, Esq., testified at trial that it was the intent of the parties that the Quinlan Tract (which, as set forth above, consisted entirely at that time of underwater riparian lands) was also conveyed by Quinlan to KHC:

> Q: … the deed from Mr. Quinlan to Keansburg Heights, did it not include a sentence which said, and it's quoted on the last sentence of your second paragraph, including such riparian rights and other rights, privileges and franchises, in and to the lands lying under the water of the Raritan Bay in front of and adjoining the above described premises.
>
> A: Yes. I see that, and I think that's a fair recital of the rights, privileges and duties and obligations of the parties.

> Q: Right, and that is using the word riparian right, that language.
> A: That's correct.
>
> Q: But your conclusion is what that language means is that Mr. Quinlan meant to convey the riparian grant to Keansburg Heights Company.
>
> A: Yes, including those privileges and franchises that he had, that he could send over.
>
> Q: Okay, so after -- so it's your conclusion that the riparian grant goes from Quinlan to Keansburg Heights Company even though it's not specifically mentioned by metes and bounds within the conveyance documents.
>
> A: Yes, that's correct, it acquires the fee title to the adjacent lands underwater from the State of New Jersey by way of a grant, and such waters underwater compromise and form what's known as Lot 3.01. I agree.
>
> 7T, pp. 61-62.

Thus, Mr. Eastman explained the conveyance was accomplished through the inclusion of language within the deed after the legal description which indicated that the conveyance also included "such riparian rights and other rights, privileges and franchises in and to the lands lying under the waters of Raritan Bay in front of and adjoining the above-described premises as are vested in" Quinlan. See 7T at pp. 61-62; see also, Pa0917-Pa0921.

KHC subdivided the uplands portions of the tract of land that it acquired from Quinlan into separate lots as shown on the map entitled "Map of Keansburg Heights" filed on June 25, 1909 as Map Case #36-19. See Pa0922. KHC subsequently conveyed the following tract of these subdivided lots to Peter Licari, who at the time

was an employee of KHC and was its registered agent, through a deed dated April 6, 1920:

> All those certain lots, tracts or parcels of land or premises . . . which on a certain map entitled, "Map of Keansburg Heights, N.J." made by Frank Osborn, Surveyor, dated June 3, 1909 and filed in the office of the Clerk of Monmouth County on June 25, 1909, are known and designated as Blocks "D" and "G", and all right, title, and interest of party of first part in the streets, roads and avenues of said map and including the property marked beach on said above mentioned map, extending from the Raritan Bay back to the lot lines and extending the entire width of the map from lot no. 35 in Block E on the east to Lot No. 30 in Block G on the west.

See Pa0923-Pa0924.

Like the deed from Quinlan to KHC, the deed from KHC to Licari did not expressly include riparian lands within the boundaries of the legal description of the tract that was being conveyed. Rather, like the deed from Quinlan to KHC, the deed from KHC to Licari included language after the legal description as to the following additional property rights that were being conveyed:

> Together with all and singular, the houses, buildings, trees, ways, **waters**, profits, privileges, and advantages, with the appurtenances to the same belonging in or in anywise appertaining;
>
> Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in, and to the same, and of, in and to every part and parcel hereof . . .

See Pa0923-Pa0924 (emphasis added). Mr. Eastman testified at trial that the inclusion of these provisions and his interpretation of the conveyance documents as

a whole demonstrated an intent on the part of KHC to convey all of its riparian rights, including its interest in the Quinlan Tract, to Licari.

> Q: you felt that using the word waters in this context was significant in terms of indicating an intent to convey the riparian grant.
>
> A: It was the best it could be done under the circumstances.
>
> Q: And then later in the same deed from Keansburg Heights to Licari, the ways, and all the estate, right, title, interest, property, claim and demand whatsoever of this party of the first part in the parcel thereof. See that?
>
> A: Yes.
>
> Q: And what is your conclusion as to why that language is significant?
>
> A: It helps deal with the problem of the claim and demand that one has to wade through in order to get to the place that it wants to be, which is having the water feature as an important part of the real estate.
>
> Q: And essentially is that clause in your view showing that the, that Keansburg Heights is trying to convey all estates and rights that they have in the property to this other entity, Mr. Licari?
>
> A: I think it's best it can be done under the circumstances.
>
> Q: And they're trying to convey all their rights.
>
> A: That's correct.

See 7T, pp. 63-64.

Approximately two months later, on June 16, 1920, Licari transferred the tract that he had acquired from KHC to a corporate entity that he owned entitled P. Licari, Inc. See Pa0925-Pa0926.

Approximately nineteen years later in 1939, the Borough initiated a foreclosure action against P. Licari, Inc. which resulted in the issuance of a Final Decree in the foreclosure entering judgment in favor of the Borough. See Pa0927-Pa0949. While the Final Decree, like all of the previous deeds within the chain of title, included a legal description of what was being acquired which was limited to the uplands portions of these lands, the Final Decree expressly indicated that the acquisition of these property rights was ". . . together with all riparian rights adjoining the above described premises". See Pa0949. Mr. Eastman testified that the Borough's foreclosure judgment resulted in the acquisition of all of the riparian rights held by P. Licari, Inc., including its rights in the Quinlan Tract as follows:

> Q: So your conclusion was when the Borough acquired this property, through foreclosure, it acquired the uplands, whatever they were as of 1939, plus all of adjoining riparian rights?
>
> A: Yeah, that's correct.
>
> Q: And those riparian rights would include the area that we've been describing as the Quinlan grant.
>
> A: Right.

See 6T, p. 47, lines 10-17.

Based on its review of the documents in the chain of title expert testimony, the Trial Court found Mr. Eastman's testimony more credible than that of Jersey Shore's experts, and determined that the Borough has owned the entire Property

(including both the uplands and the riparian Quinlan Tract) since the date of the entry of 1939 foreclosure. See 9T, p. 8.

D. The History Of The Use Of The Property Further Supports The Trial Court's Decision

The Borough presented unrebutted testimony at trial regarding the historic use of the Property which further demonstrated the Borough's ownership of the entire Property.

First, and perhaps most significantly, in 1940, only a year after obtaining the Property through the tax foreclosure, the Borough entered into a lease with the State for tidelands claimed portions of the Property for "the purpose of being improved and maintained as a public park, highway or place for public use, resort and recreation." See Pa0951-Pa0959. This lease was cancelled, but was renewed by the State for a 15-year term starting on February 17, 1944. See Pa0960-Pa0967. These lease agreements gave the Borough the right, as the uplands owner of the riparian lands adjoining those uplands, to fill the underwater riparian lands for these specified purposes. Based upon aerial photos from the 1940's, as well as subsequent mapping of the mean high-water line of the Property, a bulkhead was constructed by the Borough across the entirety of the Property sometime between 1940 and 1947. See Pa341 and Pa342; Pa0900-Pa0910.

These lease agreements did not say anything about only filling in certain portions of the riparian lands adjoining the Borough's property and then not filling

in the Quinlan Tract. To the contrary, these documents show that the State and the Borough both believed that the Borough was the owner of the uplands and that the State gave the Borough permission to fill in all riparian lands adjoining the Borough's property (which included the Quinlan Tract). Thus, the only reason that the underwater riparian lands adjoining the Borough's property were extended and filled in was due to the actions of the Borough in undertaking this fill and bulkheading project. The Borough would not have expended public funds in filling underwater riparian lands owned by others, and likewise the State would not have allowed the Borough to do so. Jersey Shore should not be allowed to benefit from the Borough's publicly-funded project to fill in and to bulkhead these riparian lands, and to then reap the benefit of the extension of the uplands caused by this project.

Michael Finnegan and Robert Yuro from T&M Associates both provided testimony at trial regarding the historic uses of the Property by the Borough and about the Borough's 1940's fill project, as well as other later fill projects by other entities who also sought and obtained permission from the Borough, as the uplands owner, to pursue these projects. There was also testimony from these witnesses and from the Borough Clerk, Mr. Cusick, about the Borough's lease of a portion of the Property to Grandal Enterprises and then of the Borough's lease of that same portion of the Property to Jersey Shore from 1995 through the present. See 4T and 5T; and Pa0969-Pa0981, Pa0992-Pa0999, and Pa1027-Pa1032. Lastly, Mr. Cusick, who

also serves as the Borough Tax Collector, testified that Lots 3 and 3.01 are listed on the Borough tax records as being Borough-owned tax-exempt property and that no taxes have been assessed or collected from KHC or from any other entity for these properties from at least the 1970's (which is as far back as the records go) to the present. See Pa0869-Pa0898.

During all of these years from the date of the Borough's Final Decree in foreclosure (i.e. 1939) to the present, the Borough took numerous actions to demonstrate its ownership of Lots 3 and 3.01, while neither KHC nor any other entity took any actions to assertany ownership rights in the Property. Judge Quinn noted the history of the use of the Property in his oral opinion as further support for his decision that the Borough owns the Property. See 9T, pp. 12-15.

E. Jersey Shore's Arguments Regarding The Title Issues Were Without Merit And Were Properly Rejected By The Trial Court

Jersey Shore conceded within its pleadings, and also within its expert reports, that the Borough is the owner of a portion of the Property. The issue, according to Jersey Shore, is whether the Borough owns the entire Property (and, specifically, whether the Quinlan Tract was passed through the chain of title and ultimately acquired by the Borough). Jersey Shore argues that the Quinlan Tract was conveyed by Quinlan to KHC in 1909, but that KHC did not convey it to Licari in 1920, and instead retained ownership of it. Jersey Shore argues that the deed from KHC to Licari did not expressly include the Quinlan Tract, and relies upon the Supreme

Court's holding in Panetta "[t]hat a riparian grant does not automatically pass with the transfer of title to the uplands."

Jersey Shore's argument is flawed on a number of levels. First, Jersey Shore ignores the portion of the Panetta decision which held that a riparian grant does pass with the transfer of title to the uplands if there is "evidence that the parties intended its inclusion". Panetta, 190 N.J. at 307. This is true even if there is no specific recitation of the riparian grant in the deed. Panetta, 190 N.J. at 307, 322. The Supreme Court expressly stated in Panetta that if a deed were to inadvertently omit an adjacent riparian grant, for example as the result of a scrivener's error, the deed should be construed and reformed to conform to the parties' actual intent. Panetta, 190 N.J. at 322. Thus, the Panetta court affirmed the long-standing principle that the intent of the parties controls what is conveyed.

The Trial Court focused on the principle in Panetta that a riparian grant can pass with the conveyance of upland property despite not being mentioned by deed. See 9T, p. 9. Judge Quinn reviewed the chain of title and determined that the parties intended riparian rights and grants to have been conveyed. 9T, p. 10. Indeed, there is ample evidence that it was the intent of the parties that the Quinlan Tract and any other riparian rights held by KHC were being conveyed to Licari. While admittedly the deed from KHC to Licari did not mention the Quinlan Tract by name and the Quinlan Tract was not included within the boundaries of the legal description of the

lands being conveyed, this was not unusual. To the contrary, every conveyance in the chain of title after Quinlan acquired the Quinlan Tract only contained a legal description of the uplands being conveyed, and none of the deeds in the chain of title ever mentioned the Quinlan Tract either by name or by legal description. The deed from KHC to Licari was no different.

Although the deed from KHC to Licari did not mention the Quinlan Tract by name, it did contain provisions that collectively show that it was KHC's intent to convey all of its property rights, including the property rights in the Quinlan Tract, to Licari. Specifically, after the legal description of the boundaries of the uplands being conveyed, the deed went on to describe these further rights that were being conveyed:

> Together with all and singular, the houses, buildings, trees, ways, **waters**, profits, privileges, and advantages, with the appurtenances to the same belonging in or in anywise appertaining;
>
> Also all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in, and to the same, and of, in and to every part and parcel hereof . . .

See Pa0923 (emphasis added).

The Borough's expert Edward Eastman testified at trial that the use of the term "waters" in the deed shows an intent to convey all riparian rights held by KHC.

> Q: So you felt that the mention of the word waters was significant?
>
> A: Well it's the mention of the word waters, as well as the mention of the beach and the streets and roads and avenues, this wasn't a conveyance like

> where they were using just general descriptions. But rather it was everything, it catches your eye because it includes the streets, the roads, the avenues, waters, together with -- and it makes a different between the ones that were, the lots that were included in the conveyance and the lots that weren't.

6T, p. 36, lines 8-16. Moreover, as riparian rights are appurtenant to the dominant estate and do not need to be mentioned in the deed in order to be conveyed (see Panetta), the parties' decision to specifically mention the conveyance of all "waters" shows an intent to include the lands obtained through riparian grant (i.e. the Quinlan Tract) within the conveyance. Mr. Eastman testified that the inclusion in the deed of general all-encompassing provisions conveying ". . . all the estate, right, title, interest, property, claim and demand whatsoever of the said party of the first part of, in, and to the same, and of, in and to every part and parcel hereof" shows that the KHC intended to convey whatever right, title and interest it held in the Property (including the Quinlan Tract) to Licari. See 6T, p. 36.

This interpretation is consistent with common sense. In Jersey Shore's view, KHC intended to convey all of its rights in the uplands to its agent/employee Licari, but intended to retain its ownership rights in the Quinlan Tract even though this land was underwater and it had no practical way to access the riparian lands if did not retain rights in the uplands. In Vagnoni v. Gibbons, 251 N.J. Super. 402, 406 (Ch. Div. 1991), the Chancery Court confronted a similar argument, (i.e. someone was arguing that the riparian lands were not conveyed with the uplands even though there was no practicable way to access the riparian lands without rights in the uplands).

The Vagnoni Court refused to impart such an unlikely intent upon a seller of land and found that where the riparian grant was practically inaccessible other than by way of the uplands, the parties' intent was for the riparian grant to pass with the conveyance of the uplands. The same conclusion should be made herein. Indeed, the alternative would have the effect of calling into question the title of nearly every property in New Jersey wherein a riparian grant was previously obtained by the current title holder's predecessor, yet omitted from any deed in the chain of title. It is doubtful that the Supreme Court intended such a result in Panetta. Hence, the Court in Panetta was careful to note that if a deed were to inadvertently omit an adjacent riparian grant, the deed should be construed and reformed to conform to the parties' actual intent. See Panetta, 190 N.J. at 322.

Another indication that the intent of the parties was that the Quinlan Tract was to be included within the conveyance of the uplands by KHC to Licari was the fact that KHC provided a warranty deed to Licari. Specifically, the Deed from Keansburg Heights into Licari states that:

> [T]he said party of the first part [Keansburg Heights] will warrant, secure, and forever defend the said land and premises unto the said party of the second part [Licari], his heirs and assigns, forever, against any lawful claims and demands of all and every person or persons fully and clearly freed and discharged of and from all manner of encumbrances whatsoever.

See Pa0924.

Such language, "that a grantor 'will warrant and forever defend the premises against all lawful claims, freed and discharged of all encumbrances,' operates as a covenant against encumbrances, and also as a general warranty." Carter v. Denman's Ex'rs, 23 N.J.L. 260, 261 (1852); see also, Kellogg v. Platt, 33 N.J.L. 328 (1869). A "general warranty deed warrants the title conveyed against all claims of others, whether or not claiming through the grantor." Fineberg, N.J. Title Practice, § 37.03 (4th Ed. 2016) (citing N.J.S.A. 46:4-7). Under a covenant of warranty, the obligation of the grantor is to warrant and defend the property conveyed "against the claims and demands of all persons whomsoever." Spiegle v. Seaman, 160 N.J. Super. 471, 482 (App. Div. 1978). "[A] grantor who has conveyed by a deed containing warranty of title will not be suffered afterwards to acquire and assert adverse title." Robinson-Shore Dev. Co. v. Gallagher, 43 N.J. Super. 430, 435 (Ch. Div. 1957). This means that even "[a] conveyance to the grantor of land subsequent to his deed to another with warranty inures to the benefit of his grantee." Moore v. Rake, 26 N.J.L. 574, 575 (1857).

Even in those situations where a person sells land to which he/she is not entitled at the time the conveyance was made, "if [the deed] contain[s] a covenant of general warranty, [it] operates by way of estoppel, to convey any estate to which he at any time afterward becomes entitled, and which would otherwise descend to his heirs." Id. A deed with a covenant of general warranty also operates to convey

accretions to land under water at the time of conveyance. Beach Realty Co. v. City of Wildwood, 105 N.J.L. 317 (1929). Finally, a covenant of warranty runs with the land. See Kuntzman v. Smith, 77 N.J. Eq. 30 (1910); see also Carter v. Denman's Ex'rs, 23 N.J.L. 260 (1852); see also Greenwood v. Robbins, 108 N.J. Eq. 122 (Ch. 1931) (a covenant of warranty of title is a covenant in futuro, and runs with the land).

If KHC intended to convey all of its property rights to Licari and then provided Licari with a warranty deed, this further demonstrates that KHC intended to convey the Quinlan Tract to Licari. Otherwise, it would not have conveyed the all-encompassing rights that it conveyed to Licari with a general warranty.

Lastly, the intent of the parties is further shown by their actions after the conveyance. While Jersey Shore contends that KHC intended to retain its riparian rights in the Quinlan Tract and to convey all of its other property rights to Licari, KHC did not take any actions once it sold the Property to Licari in 1920 that would suggest that it had retained any property rights in the Quinlan Tract. To the contrary, once it sold the Property in 1920, it never took any other actions with regard to the Quinlan Tract, and it never paid taxes on the lot or did anything else to suggest that it owned the tract. On the other hand, as described in the sections below, once the Borough took title to the Property in 1939, it took numerous actions showing its ownership of the entire Property (which has been listed for many decades on the Borough tax maps as Borough-owned land).

In addition to all of the other flaws in Jersey Shore's arguments regarding the ownership of the Property, one final flaw is that its argument is internally inconsistent. Jersey Shore argues that KHC did not convey the Quinlan Tract to Licari in 1920 because the Quinlan Tract was not expressly included in the deed of conveyance and, based upon the holding in Panetta, riparian grants do not automatically pass with the uplands. What Jersey Shore fails to recognize, however, is that the Quinlan Tract was not expressly mentioned in any of the deeds of conveyances in this chain of title, and yet Jersey Shore contends that the Quinlan Tract was conveyed in the "Quinlan to KHC" deed. Jersey Shore cannot have it both ways. Either the Quinlan Tract passed with the uplands despite not being expressly delineated within the deeds or it did not. By arguing that it passed with the uplands in the "Quinlan to KHC" deed, but not in any of the later deeds in the chain of title, Jersey Shore is making an internally inconsistent argument which should be rejected by this Court.

POINT II

THE TRIAL COURT CORRECTLY REJECTED JERSEY SHORE'S ARGUMENT THAT IT OWNED THE PROPERTY

In entering final judgment dismissing Jersey Shore's Complaint and concluding that the Borough is the owner of the entire Property, the Trial Court rejected Jersey Shore's argument that it should be declared to be the owner of the Quinlan Tract (and should therefore also be declared to be an owner of portions of

the Property and of the Leased Premises) by virtue of the quitclaim deeds that Jersey Shore obtained from some of the heirs of KHC. In reaching that determination, the Trial Court noted that ". . . it just does not seem credible to the Court that the plaintiffs' assertion of ownership through the heirs of Keansburg Heights Company, through quit claim deeds, is valid", 9T, p. 14, lines 3-6. The Trial Court therefore concluded that Jersey Shore ". . . has no ownership interest in the disputed parcels". 9T, p. 15, lines 18-19.

The Trial Court's findings rejecting Jersey Shore's ownership claims were supported by the record and were consistent with law. Additionally, Jersey Shore's efforts in searching for title defects and potential heirs in the chain of title and then obtaining quitclaim deeds from those alleged heirs were contrary to public policy in New Jersey and to the principles of equity guiding the Chancery Division.

A. The Trial Court's Determination That Jersey Shore Has No Ownership Rights In The Property Was Supported By The Record And Was Consistent With Law

In his oral opinion, Judge Quinn made factual findings based upon the credibility of the witnesses presented by the parties and the evidence presented. As set forth more fully in Point I above, those factual findings are entitled to deference on appeal and should not be disturbed.

Likewise, this brief previously analyzed why Judge Quinn's final judgment dismissing Jersey Shore's Complaint and determining that the Borough is the owner

of the Property was consistent with applicable law. If the Borough is the owner of the Property, then clearly Jersey Shore is not the owner. Thus, the same arguments that support Judge Quinn's determination that the Borough is the owner of the Property also support his finding that Jersey Shore has no ownership interest in the Property.

B. Jersey Shore's Efforts To Identify Alleged Defects In Title And To Seek To Obtain Ownership Rights In The Property Based Upon These Defects Were Against New Jersey Public Policy

The New Jersey Supreme Court has expressed its displeasure with "heir hunters" that acquire partial interests in property for nominal consideration and who then attempt to enforce those interests to the detriment of other owners. See Wattles v. Plotts, 120 N.J. 444, 577 (1990). Similarly, Courts have expressed its disfavor of those described as "intermeddlers"; "title raiders"; or "heir hunters". See O Y Old Bridge Dev. Corp. v. Cont'l Searchers, Inc., 120 N.J. 454, 577 (1990); Bron v. Weintraub, 42 N.J. 87 (1964); Savage v. Weissman, 355 N.J.Super. 429 (App.Div. 2002).

In Bron, the Court found that it was against public policy for heirs of a prior owner to capitalize on a defect in an initial tax foreclosure action initiated by a municipality, after the property had been developed and occupied by subsequent residential purchasers. The Court said:

> [N]o one disputes the right of the holders of existing interests to convey them to third persons if they wish. What is challenged is the legality of

> the intrusion into the scene by third persons who seek only to further their own interests rather than the interests already on hand. As we have pointed out, the policy of the statute is to support tax titles, a policy which overall is burdened by the conduct before us. . . . We see no social value or contribution in the activities of [the intervenor]. On the contrary, decent men must sense only revulsion in this traffic in the misfortunes of others.
>
> Id. at 95.

The Court in Bron found that the provisions of New Jersey Tax Sale Law should be liberally construed to encourage the barring of the right of redemption so as to secure the marketability of titles. Id. "Protecting the marketability of tax titles enables municipalities to maximize the recovery of unpaid property taxes and return property to the tax rolls." Cherokee Equities v. Garaventa, 382 N.J. Super. 201, 206 (N.J. Super. Ch. Div. 2005).

Additionally, the Courts disfavor windfalls gained by heir hunters. In Savage, the Court held that "a sum paid to the heir or owner, which is disproportionate to the windfall the heir hunter or title raider seeks to reap and to the value of the tract is a hallmark of the [practice] condemned by the Supreme Court." Savage, *supra* 429, 443 n.1 (N.J. Super. 2002)(citing O Y Old Bridge, *supra*, 120 N.J. at 458). When determining whether a purchase is for nominal consideration the trial court must look to the "reasonable value of the interest acquired." Cherokee Equities, *supra* at 212 (N.J. Super. Ch. Div. 2005).

Lastly, in Phoenix Pinelands Corporation v. Davidoff, 467 N.J. Super. 532 (App. Div. 2021), the Appellate Division again reiterated the strong public policy against heir hunting. The court noted that the plaintiff Phoenix had mounted a surreptitious two-decade-long quest to undermine and cloud the State's title to the properties at issues and to establish its own competing chains of title, that Phoenix had spent over $1 million hiring searchers, surveyors, genealogists and lawyers to exploit potential defects in the State's titles, and that it had tracked down putative heirs and purchased their fractional interests, sometimes for sums approximating actual value, by way of omnibus quitclaim deeds it drafted for the purpose. In rejected most of the claims asserted by Phoenix that it had taken ownership of the subject properties, the Appellate Division noted that those who seek to exploit technical flaws in title in order to upset existing equities and clearly vested rights are "title raiders" whose actions are anathema to the principles undergirding New Jersey's land title laws. Phoenix Pinelands Corp, 467 N.J. Super. at 592-593.

Here, after filing its Complaint in this litigation, Jersey Shore searched for the heirs of KHC and obtained quitclaim deeds from eight of these alleged heirs. Each deed indicates that it was acquired for the nominal consideration of only $500.00. Thereby, Jersey Shore attempted to assert the quitclaim deeds, which it only paid a total of $4,000.00 to obtain, now gives it the ownership rights in a large parcel of

beachfront property directly adjacent to the Raritan Bay. This is nowhere close to the reasonable value of what an interest in the Quinlan Tract would be worth.

Not only would Jersey Shore be obtaining beachfront property for a nominal amount, there is also the issue of unpaid taxes. Since the Borough obtained the Property in 1939, there have been no taxes assessed on it since it has been owned by the municipality. As indicated above, a municipality is permitted to assess and collect taxes against title holders of riparian grants. Borough of Island Heights, *supra*. Thus, if there has been some other owner of Lot 3.01, the Borough could have collected property taxes from that owner from 1939 to the present. If the Court finds that Jersey Shore has any interest in the Quinlan Tract, it would be obtaining a substantial windfall in that it would be receiving interest in a parcel of property that, if not owned by the municipality, could and would have been taxed for over eighty years. To allow Jersey Shore to claim an interest in the Property by way of quitclaim deeds obtained from heirs of a defunct corporation that has not asserted any ownership rights to the Property for roughly one hundred years, at the expense of the Borough who has owned and maintained the Property since 1939, would be inequitable.

POINT III

THE TRIAL COURT DID NOT ERR IN ALLOWING THE BOROUGH'S TITLE EXPERT EDWARD EASTMAN TO TESTIFY AT TRIAL

Jersey Shore also argues that the Trial Court erred in allowing the Borough's title expert Edward Eastman to testify at trial. This argument must be rejected for a number of reasons.

A. Jersey Shore Failed To Object At Trial To The Borough's Presentation Of Testimony From Its Title Expert Edward Eastman

First of all, Jersey Shore should not be permitted to raise this argument on appeal because it failed to properly object at trial to the Borough's presentation of testimony from its title expert Edward Eastman.

As explained earlier in this brief, Jersey Shore initially sought to bar the testimony of the Borough's title expert Edward Eastman through the filing a pre-trial motion in limine. After considering the arguments of counsel, Judge Gummer denied Jersey Shore's motion without prejudice to its renewal at trial. 8T, p. 21, lines 21-23 and p. 28., lines 13-15. In making this decision, Judge Gummer noted that

> . . . it would be inappropriate for the Court at this time to bar defendant's expert without having heard presentation of testimony by the plaintiff's expert, if in fact defendant's expert has been submitted to rebut that of plaintiff's expert. The plaintiff's expert could simply be limited to the subject area that Mr. Gasiorowski has outlined, or it could factor into areas about which, about which Mr. Eastman has opined. And I simply cannot make that determination here before trial.
>
> Now, and as, also as counsel for the defendant points out there may be factual issues about which Mr. Eastman's opinion would be permissible under Rule 702. The Court cannot now before trial make a determination as to what those factual issues may be before trial.

8T, p. 27, lines 22-25 and p. 28, lines 1-6.

Thus, Jersey Shore was on notice that Judge Gummer's ruling was without prejudice and that Jersey Shore could re-apply to bar Mr. Eastman's testimony during the course of the trial if it believed that there was a basis to do so. Jersey Shore failed to move at trial to bar Mr. Eastman from testifying. Likewise, Jersey Shore failed to object to any of the testimony provided by Mr. Eastman at trial as being beyond the proper scope of expert testimony. See 6T and 7T. Having failed to do either of these things during the course of the trial, Jersey Shore cannot now argue on appeal that the Trial Court erred in allowing Mr. Eastman to testify.

The New Jersey Rules of Court provide that:

> For the purpose of reserving questions for review or appeal relating to rulings or orders of the court or instructions to the jury, a party, at the time the ruling or order is made or sought, shall make known to the court specifically the action which the party desires the court to take or the party's objection to the action taken and the grounds therefor.

See R. 1:7-2. To preserve an issue for appeal, there must be a reasonable opportunity to present the issue to the trial court. See State v. Robinson, 200 N.J. 1, 20 (2009) ("A party shall only be prejudiced by the absence of an objection if there was an opportunity to object to a ruling, order or charge.").

Here, there was a reasonable opportunity for Jersey Shore to either renew its application to bar the testimony of Mr. Eastman at trial or to object to the scope of his testimony. Indeed, Judge Gummer expressly noted that her ruling was without

prejudice and that the application to bar Mr. Eastman's testimony could be renewed by Jersey Shore at trial. As Jersey Shore had the reasonable opportunity to either renew its motion to bar Mr. Eastman's testimony at trial or to object to the scope of the testimony at trial, and did neither, it waived its right to assert that Mr. Eastman should have been barred from providing testimony as it never presented this issue to Judge Quinn for a ruling. For these reasons, the arguments raised in Point II of Jersey Shore's brief should be disregarded by this Court.

Moreover, to the extent (if at all) that Jersey Shore is only challenging the propriety of Judge Gummer's May 8, 2020 decision and is not challenging the propriety of the actions taken by Judge Quinn during the trial, Judge Gummer's decision did not constitute reversible error. Rather, it was within her discretion to decide that a ruling on an evidentiary issue such as whether to bar and/or limit the testimony of a witness should be denied without prejudice to its renewal at trial where it could be evaluated in the context of the trial testimony.

B. The Trial Court Did Not Err In Allowing The Borough's Title Expert Edward Eastman To Testify At Trial

For the reasons set forth in Section A above, the merits of the arguments raised by Jersey Shore within Point II of its brief should not be considered by this Court. If they are considered, however, it is clear from a review of the record below, as well as the law governing expert testimony, that it was not reversible error for the Trial

Court to allow the Borough's title expert Edward Eastman to provide testimony at trial.

One of the central issues in this case was whether certain riparian lands abutting the Property were conveyed through the deeds in a chain of title that extended from 1871 to the present. While the law requires a court to discern the intent of the parties involved in the deeds of conveyances in the chain of title, there were title issues, including but not limited to the interpretation of metes and bounds descriptions, tidelands maps, the interpretation of ambiguous language in the deeds, and issues regarding riparian rights and grants, where expert testimony would assist the Trial Court's review of this evidence.

Notably, both parties clearly agreed that the assistance of title expert testimony would assist the Trial Court in this case, as Jersey Shore presented testimony from two title experts (Richard Venino, an attorney specializing in title law, and George Piccola, a title company consultant) and the Borough presented testimony from one title expert (Edward Eastman, an attorney with an expertise in title issues). Just as notably, the Borough's expert Edward Eastman was retained in order to rebut the expert reports prepared by Jersey Shore's experts. In other words, the Borough only brought an attorney title expert into this case in order to rebut the attorney title expert (as well as the non-attorney title expert) presented by Jersey Shore.

The decision on whether to admit expert testimony is "remitted to the sound discretion of the trial court." Townsend v. Pierre, 221 N.J. 36, 52 (2015) (citing State v. Berry, 140 N.J. 280, 293 (1995)). New Jersey Rule of Evidence 702 allows a witness to offer expert opinion testimony "[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise."

Here, the Trial Court properly exercised his discretion to allow testimony from the title experts for both parties to the case, no doubt recognizing that the title industry is a specialized field involving technical knowledge about recorded instruments and conveyances, that title documents need to be evaluated based upon applicable industry and legal standards, and that this case presented complex land and title matters, including but not limited to the interpretation of riparian rights and grants. A factfinder "should not be allowed to speculate without the aid of expert testimony in any area where lay persons could not be expected to have sufficient knowledge or experience." Biunno, Weissbard & Zegas, Current N.J. Rules of Evidence, cmt. 1 on N.J.R.E. 702 (2018). Simply stated, "expert testimony is required when the subject matter is so esoteric that jurors [or factfinders] of common judgment and experience cannot form a valid judgment." Id.

There can be little doubt that the field of title work including, but not limited to, riparian rights, is the type of subject matter where specialized knowledge was needed to assist the Court in it function, as the factfinder in this bench trial, to evaluate the evidence presented at trial. It was therefore not reversible error for the Trial Court to allow both sides to present testimony from title experts. This discretionary decision by the Trial Court should be granted deference on appeal and should not be disturbed by this Court.

The basic premise of Jersey Shore's motion to bar the testimony of Mr. Eastman was that all that Mr. Eastman did was to interpret the deeds in the chain of title and to testify regarding their meaning, and that this was a legal function for the Trial Court to undertake. In support of this argument, Jersey Shore noted that experts "may not render opinions on matters which involve a question of the law", Healy v. Fairleigh Dickinson Univ., 287 N.J. Super. 407, 413 (App. Div.), certif. denied, 145 N.J. 372 (1996).

The Borough disagrees that this is all that Mr. Eastman did. While it might be true that the *construction* of a deed is a question of law and is not subject to expert testimony, when there is an ambiguity present, there is a factual issue presented and extrinsic evidence can be considered. Hofer v. Carina, 4 N.J. 244, 250 (1950); See also Woodhaven Lumber & Millwork, Inc. v. Monmouth Design & Dev. Co., 2014 WL 1326994, at *6 (N.J. Super. Ct. App. Div. Apr. 4, 2014) ("If the meaning of an

ambiguous provision depends upon the resolution of factual disputes, then the meaning of the doubtful provision is itself a question of fact."). Under these circumstances, input from an expert's specialized knowledge as to the use of specific terms and practices within an industry would assist the trier of fact to understand the evidence or to determine a fact in issue, and therefore should be admissible pursuant to N.J.R.E. 702. That is one of the many things that Mr. Eastman provided through his testimony. Mr. Eastman, who serves as the Executive Director of the New Jersey Land Title Association, also provided testimony about what the title industry would review and would consider important in insuring title on a property, including a property with riparian rights issues such as the one which is the subject of this litigation.

Moreover, Jersey Shore's argument that it is improper for an expert to review and to testify about the meaning of deeds is belied by the fact that it presented evidence from its own title experts doing the same exact thing. Jersey Shore cannot have it both ways. It was Jersey Shore that brought an attorney (i.e. Richard Venino) into this case as a title expert to provide expert testimony based upon his 42 years as a practicing attorney in New Jersey specializing in property law and land title litigation. The Borough intentionally retained an expert with similar qualifications to those held by Mr. Venino in order to be able to adequately rebut Mr. Venino's report. For Jersey Shore to move to bar the testimony of the Borough's title expert

while its own title expert witness is similarly situated as an attorney would have been not only improper, but unjust.

Finally, it must be remembered that this was a bench trial held in the Chancery Division, and that therefore there was no legitimate concern about whether the scope of the expert testimony provided would confuse the factfinder since this was not a jury trial. For all of these reasons, the Trial Court properly exercised his discretion to allow each side to present testimony from title experts. This discretionary decision by the Trial Court should be granted deference on appeal and should not be disturbed by this Court.

CONCLUSION

For the foregoing reasons, the Trial Court's Order of final judgment dismissing Jersey Shore's Complaint with prejudice should be affirmed on appeal.

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Counsel for Respondent Borough of Keansburg

By: *David A. Clark*
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Dated: July 3, 2024

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July 17, 2024

Via: e-Filing
Honorable Judges, Appellate Division
Superior Court of New Jersey
Hughes Justice Complex
25 West Market Street
Trenton, New Jersey 08625-0006

RE: JERSEY SHORE BEACH AND BOARDWALK COMPANY, INC., a/k/a JERSEY SHORE BEACH AND BOARDWALK INC. v. BOROUGH OF KEANSBURG
Appellate Docket No. Docket No. A-621-23

Reply Letter Brief on Behalf of Plaintiff/Appellant Jersey Shore Beach and Boardwalk Company, Inc. a/k/a Jersey Shore Beach and Boardwalk Inc.

TO THE HONORABLE JUDGES OF THE APPELLATE COURT:

The Plaintiff/Appellant Jersey Shore Beach and Boardwalk Company, Inc. a/k/a Jersey Shore Beach and Boardwalk Inc. (hereinafter "Jersey Shore") has filed an Appellate Brief and Appendix. The Defendants/Respondents – Borough of Keansburg ("Keansburg") have filed their responding Briefs. Kindly accept this Letter Brief as per R. 2:6-2(b) and R. 2:6-5 as the Reply Letter Brief on behalf of Jersey Shore.

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PROCEDURAL HISTORY

Jersey Shore adopts the Procedural History set forth in its Appellate Brief.

STATEMENT OF FACTS

Jersey Shore adopts the Statement of Facts set forth in its Appellate Brief.

LEGAL ARGUMENT

POINT ONE

THE TRIAL COURT'S ORDER DISMISSING JERSEY SHORE'S COMPLAINT AND DETERMINING THAT THE BOROUGH OWNS THE PROPERTY WAS NOT SUPPORTED BY THE RECORD OR THE APPLICABLE LAW

In its Appellate Brief the Borough argues that: "Although this history is both long and complex, the underlying legal principle of any land conveyance is the same principle that applies to any contract interpretation- to determine and to give effect to the intention of the parties." (Db 22). The Borough then goes to great lengths to cite examples of how the Borough acted and a defunct corporation – Keansburg Heights Company – did not act to purportedly establish the "intent" of the "land conveyance" to the Borough. The problem with this position is two-fold: (1) the Borough did not acquire title through a bargained for sale and contract/arm's length transaction but rather obtained the property through an in-rem tax foreclosure; and (2) the clearest intent of what property the Borough acquired is what was conveyed from Keansburg Heights Company to Peter Licari by Deed dated April 8, 1920. (J-

5, Pa923) That Deed did not convey the Riparian Grant acquired by Keansburg Heights Company, being the substantial majority of Lot 3.01. That Deed did not in any way specifically reference the Riparian Grant, which remained vested in Keansburg Heights Company. By Deed recorded June 18, 1920 (J-6, Pa925), Peter Licari transferred ownership of what property interest had been conveyed to him (what was then only upland property) to "P. Licari, Inc." In the foreclosure action the Borough did not name Keansburg Heights Company as a Defendant; therefore, the Borough could only foreclose that which was actually owned by P. Licari, Inc. and that did not include the Riparian Grant. The Borough in its Appellate Brief spends a great deal of time emphasizing what happened after the foreclosure action but pays little attention to the uncontroverted evidence:

- Prior to 1900, title to the upland portion of Lot 3 was owned by William Quinlan. In 1879, Quinlan acquired fee simple title by **Riparian Grant** to what is now identified as line-item Lot: 3.01 from the State of New Jersey.

- In 1909 William Quinlan, Jr. conveyed all the lands as shown on a certain Map entitled "Map of Keansburg Heights" filed in the Monmouth County Clerk's Office to the Keansburg Heights Company. That conveyance specifically included all riparian rights owned by Quinlan including the **Riparian Grant**. The **Riparian Grant was specifically described as the land lying beneath the water**. This transfer of the **Riparian Grant** is not contested or challenged by Defendant Keansburg or their Expert Witness Edward Eastman, Esq.

- In 1920, Keansburg Heights Company conveyed many of the lots shown on the previously referenced "Map of Keansburg Heights" including certain property identified on this Map to Peter Licari by Deed dated April 8, 1920.

Significantly, that Deed did not in any way specifically reference the Riparian Grant.

- The New Jersey Supreme Court has unequivocally held as a matter of fact and law that:

> ... [A] riparian grant is a conveyance in fee simple of real property. As such, without specific mention in the deed or other evidence that the parties intended its inclusion, a riparian grant will not pass as appurtenant to another distinct parcel.

[Panetta v. Equity, 190 *N.J.* 307, 309 (2007)].

- Therefore, the failure to include a specific reference to transferring the **Riparian Grant** as a matter of fact and law, means the ownership of the **Riparian Grant** remained vested in the Keansburg Heights Company and such ownership was in no way affected by the April 8, 1920 Deed to Peter Licari.

- Thereafter, by way of Deed recorded June 18, 1920, Peter Licari transferred ownership of what property interest that had been conveyed to him (what was then only upland property) to "P. Licari, Inc.".

- Thereafter, P. Licari, Inc. failed to pay municipal real property taxes and as such the local municipality Defendant Borough of Keansburg filed a statutory Real Property Tax Foreclosure Action. This action did not name Keansburg Heights Company as a Defendant. The Borough of Keansburg sought to foreclose, but as a matter of fact and law they could only foreclose on what was actually owned by Defendant P. Licari, Inc., which DID NOT INCLUDE the **Riparian Grant.**

- On October 23, 1939, a Final Decree *(*the legal equivalent of what today is called a "Final Judgment")* in Property Tax Foreclosure was entered in favor of Defendant Borough of Keansburg and against Defendant P. Licari, Inc. Since P. Licari, Inc. never took title to the **Riparian Grant**, the **Riparian Grant** was still lawfully owned by the Keansburg Heights Company.

- Ultimately, over the years, a large portion of the land subject to the **Riparian Grant** owned by Keansburg Heights Company which was underwater land came to be now upland property.

- In 1995 Plaintiff Jersey Shore and Defendant Keansburg entered into what was the first of several written Lease Agreements/Amended Lease Agreements to rent what was now identified as the entirety of line-item Lot: 3.01 The Borough of Keansburg expressly represented to Plaintiff Jersey Shore that they were the legal owners of the entirety of line-item Lot: 3.01, and under the totality of the circumstances Plaintiff Jersey Shore reasonably believed this to be true.

- Over the next 28 years, Plaintiff Jersey Shore, reasonably believing that Defendant Keansburg in fact owned such property, made what amounts to over **$872,916.70** in rental payments to The Borough of Keansburg which Keansburg collected, converted to their own use, and kept.

- This number **$872,916.70** is taken directly from the documents admitted into evidence in this case, and is therefore uncontested as to amount as follows: **(*_See_ "Exhibit J-12" in Evidence (Pa969): May 17, 1995 Lease between the Borough of Keansburg and Jersey Shore Beach and Boardwalk Company, Inc. and Amendment to May 17, 1995 Lease Agreement)** 1995: $15,100.00; 1996: $15,100.00; 1997: $15,100.00; 1998: $15,100.00; 1999: $15,100.00 **(*_See_ Exhibit J-14" in Evidence: May 4, 1999 (Pa992) Amended Lease Agreement between the Borough of Keansburg and Jersey Shore Beach and Boardwalk Company, Inc. and Rider to Amended Lease Agreement)** 2000: $20,000.00; 2001: $20,000.00; 2002: $20,000.00; 2003: $20,000.00; 2004: $20,000.00; 2005: $40,000.00; 2006: $40,000.00; 2007: $40,000.00; 2008: $40,000.00; 2009: $40,000.00; 2010: $45,000.00; 2011: $45,000.00 **(*_See_ "Exhibit J-19" in Evidence (Pa1027): February 22, 2012 Amended Lease Agreement between the Borough of Keansburg and Jersey Shore Beach and Boardwalk Company, Inc. and Resolution 12-53 authorizing the Amended Lease – monthly rent same as the May 4, 1999 Amended Lease Agreement)** 2012: $45,000.00; 2013: $45,000.00; 2014: $45,000.00; 2015: $50,000.00; 2016: $50,000.00; 2017: $50,000.00; 2018: $50,000.00; 2019: $50,000.00; 2020: $55,000.00; 2021: $55,000.00; 2022: $55,000.00 then January through May 2023 at $4,583.34 X 5 months = $22,916.70, for a total of **$872,916.70** in rental payments made by Plaintiff Jersey Shore and collected by the Borough of Keansburg.

- Keansburg Heights Company, or more accurately the heirs to the former owner of the Keansburg Heights Company, were the lawful owners of the subject property.

- The last surviving director and trustee in dissolution of the Keansburg Heights Company was Albert E. Straker, who is now deceased.

- Straker had five heirs: (1) Helen R. Spinder; (2) Paul H. Hunter; (3) Diana Spindler; (4) Pamela Kuhens; and (5) Lydia K. Hall.

- Each of these five heirs was contacted by Roxanne Kwiatek, and each heir signed a Quitclaim Deed conveying their interest in the subject property to Kwiatek for $500.00, effectively transferring legal title and ownership to Kwiatek in most of what today is identified as line-item Lot: 3, and ownership of all of line-item Lot: 3.01.

- Thereafter, Kwiatek transferred title to such properties to Plaintiff Jersey Shore by Quitclaim Deed. All Quitclaim Deeds are now filed of record with the Monmouth County Clerk. As a result of same, Jersey Shore is now today the legal record owner of most of Lot: 3 (**excepting only that small portion that is the subject of the October 23, 1939 Final Tax Foreclosure Judgment*) and literally ALL of Lot: 3.01. **(*See N.J.R.E.* 201).**

As outlined in Jersey Shore's Appellate Brief, at the time of Trial Jersey Shore called witnesses George Piccolo and Richard Venino, Jr., Esq. as expert witnesses in the field of title. Defendant Keansburg called Edward Eastman, Esq. as an expert witness in the field of title. The three witnesses agreed there is a significant factual and legal difference and distinction between a *Riparian Right* and a *Riparian Grant.* This is significant because (as was demonstrated with Maps and aerial photographs) what today is the dry land that makes up the subject property was formerly land that was underwater, but subject to a Riparian GRANT. It is land artificially filled.

Each witness also agreed with the distinction explained by the New Jersey Supreme Court in Panetta which is the governing legal precedent:

> Unlike a riparian right, which is a license or a privilege, ***a riparian grant is a conveyance in fee simple of real property. As such, without specific mention in the deed or other evidence that the parties intended its inclusion, a riparian grant will not pass as appurtenant to another distinct parcel.*** (Emphasis added).
>
> ***
>
> In short, ***a riparian grant is the conveyance of real property divided from the uplands by a fixed boundary, no different than any other conveyance of land***. *See* Busby v. Rose, 114 *N.J. Eq.* 580 (Ch. Div. 1933) (adjoining riparian tract is "distinct and separate estate"); Moore v. Ventnor Gardens, Inc., 105 *N.J. Eq.* 730, 735 (Ch. 1930) (observing that mortgage of land abutting water does not included separate riparian grant), *aff'd o.b.*, 109 *N.J. Eq.* 132 (E & A 1931); *see also* 29 *New Jersey Practice, Law of Mortgages*, §5.7, at 42 (Myron C. Weinstein) 2d ed. Supp. 2005) (defining riparian grant as tract of land entirely separate and distinct from uplands).
>
> ***
>
> ... ***[A] separately assessed riparian grant is not appurtenant to abutting upland property as a matter of law.*** (Emphasis added).

Panetta v. Equity, 190 *N.J.* 307 at 309, at 319 and at 324 (2007).

Unless the expert witnesses could point to a "... *specific mention in the deed or other evidence that the parties intended its inclusion* ...", then as a matter of fact and law the riparian grant at issue was not included (and was excluded) from any transfer of interest to the Borough of Keansburg. Without this proof, the Borough of Keansburg never took title to the subject property. The Borough only took title

to what today is a minor, small *de minimis* strip of land on part of line-item Lot: 3. This was Jersey Shore's contention, and it was supported by the evidence; moreover, the legal premise as articulated in the Panetta decision was not disputed by the experts on either side. Thus, the facts and the law do not support the Trial Courts decision.

Despite the volumes of documentary evidence (mostly Deeds and Maps), most of which were drafted and filed of record with the government well over 100 years ago, this case was ultimately reduced to title expert assessment of these old Maps and Deeds on file to determine whether in fact the Borough of Keansburg ever actually took or acquired legal title to the subject property (the majority of property described today as line item Lot: 3 and all of line item Lot: 3.01) in the October 23, 1939 Foreclosure Decree. If Defendant Keansburg never took title to the subject property, then Jersey Shore is entitled to a Court Declaration Quieting Title in their favor and monetary damages.

The answer to this disputed question of material fact –the only actual disputed material relevant question at issue in this trial – is the "Expert Opinion" of the expert witnesses from both sides to the single question: Whether in 1939 when the Borough of Keansburg took title to the subject property by Sheriff's Deed whether the Deed conveyed to them legal title to the (then) dry land only, or to BOTH the (then) dry land *and the riparian grant at issue*. There is no reasonable dispute as to the answer

to this determinative question: Defendant Keansburg never took or acquired title. They do not own the subject property. All the Borough cites to is future actions taken by the Borough and not taken by a defunct company, not the undisputed fact that the Borough never acquired title to the Riparian Grant through the foreclosure.

The Trial Court's determination that Keansburg's expert, Edward Eastman, Esq. was more credible is simply not even a part of the analysis. Eastman could not proffer an opinion. When specifically asked the question on "cross", he responded by saying he was thinking. (7T74:6) Ultimately, what was revealed through the testimony of Jersey Shore's two experts is that there is no reasonable question but that the transfer of title from the Keansburg Heights Company to Peter Licari did not include the term "**Riparian Grant**". Under Panetta v. Equity title in all of and the entirety of the **Riparian Grant** remained vested in the Keansburg Heights Company. The documents themselves were clear. And while the October 23, 1939 Decree and some of the earlier documents had language that Defendant Keansburg was trying to argue supported their ownership claim, those referenced documents at best arguably only referenced riparian rights (which is not a fee simple ownership interest). They clearly did not unequivocally state that there was a transfer of **Riparian Grant**, and that the only unequivocal and valid transfer of ownership of the **Riparian Grant** at issue prior to 1939 was from the Quinlan to Keansburg Heights Company grant.

The Borough's title expert Eastman admitted that "... *when one receives a* ***riparian grant,*** *they are acquiring title to the land which is under the water, tidally flowed water ...*". (7T73:15-19) That is the law. But when further questioned: "*If someone acquires a* ***riparian right****, does he also acquire title to land which is lying beneath the water?"* where the answer to this question is clearly "no" by virtue of the Supreme Court's holding in Panetta v. Equity, supra, after an uncomfortable period of silence and attempt to avoid the simple question, and unwilling to be the person that put the proverbial "nail in the coffin" of the Borough of Keansburg's entire argument, Eastman finally answered: *"Sitting here today I have no opinion on the question."* (7T74:2-75) Then when questioned whether the specific phrase "**Riparian Right**" is found in any of "... *the deeds from Keansburg Heights to Licari and from Licari to Licari, Inc....*" (the Court could take Judicial Notice under *N.J.R.E.* 202 that the only correct answer is "NO") Eastman first claimed that it was "possible" that the phrase was there, but when pushed he conceded that "*I don't know if they're there. So, I can't answer your question."* (7T75:8-24) The witness had the documents in front of him.

So, on the two critical questions in the case, Defendant Keansburg's expert witness "had no opinion on the question" and "did not know". The testimony of Plaintiff Jersey Shore's experts George Piccola and Richard Venino, Jr., Esq. on

these two critical points is unchallenged. If Defendant Keansburg never in fact took title to the subject property, then Plaintiff Jersey Shore is entitled to a Court Declaration Quieting Title in their favor and monetary damages.

The answer to this disputed question of material fact –the only actual disputed material relevant question at issue in this trial – is the "Expert Opinion" of the expert witnesses from both sides to the single question: Whether in 1939 when Defendant Keansburg took title to the subject property by Sheriff's Deed whether the Deed conveyed to them legal title to the (then) dry land only, or to BOTH the (then) dry land *and the riparian grant at issue*. Jersey Shore maintains there is still no longer any reasonable dispute as to the answer to this determinative question: Defendant Keansburg never took or acquired title. Therefore, the Borough does not own the subject property.

CONCLUSION

Based on the foregoing, the decision of the Trial Court should be reversed.

Respectfully submitted:
GASIOROWSKI & HOLOBINKO
Attorney for Appellant Jersey Shore Beach and Boardwalk Company, Inc. a/k/a Jersey Shore Beach & Boardwalk

Dated: By: _____
R.S. GASIOROWSKI, ESQ.