

**COURT OF CHANCERY
OF THE
STATE OF DELAWARE**

WILLIAM B. CHANDLER III
CHANCELLOR

COURT OF CHANCERY COURTHOUSE
34 THE CIRCLE
GEORGETOWN, DELAWARE 19947

Submitted: September 1, 2005

Decided: December 23, 2005

Kashif I. Chowdhry, Esq.
David N. Rutt, Esq.
122 West Market Street, P.O. Box 554
Georgetown, Delaware 19947

Shawn P. Tucker, Esq.
Wolf Block Schorr and Solis-Cohen LLP
1100 North Market Street, Suite 1001
Wilmington, Delaware 19801

Re: *Robin A. Karman v. Carl Anderson and James Atkins*
Civil Action No. 02079-S

Dear Counsel:

After carefully examining the arguments presented by counsel, I hereby grant defendants' motion for summary judgment for the reasons set forth below.

Plaintiff and Defendants are Sussex County neighbors whose properties back one another. On December 20, 2000, Karman filed a complaint in this Court alleging that certain improvements made on the property at 8 Terrace Road, near Rehoboth Beach, resulted in a violation of the set-back requirements set forth in the Sussex County zoning ordinances and that such improvements constituted a trespass on Karman's abutting property.

On March 2, 2001, the owner of 8 Terrace Road, Mr. Solsnes (who shortly after bequeathed the property to defendants upon his passing), applied to the Board of Adjustment for Sussex County for a variance from the Sussex County zoning ordinances for the improvements that had already been made. The Board made certain findings, including that improvements to the property were vertical, and did not extend beyond the previously existing walls, and that an overhang which

encroached into the setbacks had been removed. Given these findings, the Board concluded that due to reliance on prior interpretations of the ordinance, and the improvement expenditures already incurred in such reliance, that no variance was necessary.

Plaintiff filed an appeal with the Superior Court. Because the filing lacked the transcript from the Board hearing (and because plaintiff's counsel failed to provide such transcript upon its request), the Superior Court dismissed the appeal on August 27, 2002. On April 26, 2005, the Superior Court denied plaintiff's motion to re-open the appeal.

Collateral estoppel bars Plaintiff from pursuing both her claims. When a court or administrative agency decides an issue of fact, the doctrine of collateral estoppel precludes re-litigation of that issue. The Board was to consider whether Solsnes was entitled to a variance, but first considered whether a variance was required at all—that is, whether there was a violation of an ordinance that could be remedied with a variance. The Board decided that the application for the variance was rendered moot, due to the reliance on the Board's prior (and possibly incorrect) interpretation of the ordinance. The Board's order specifically precluded plaintiff's claim that defendants remain in violation of the same ordinance, because finding that the improvements were permissible under the ordinance was an essential element to the Board's ruling (and not an inference as plaintiff contends). Plaintiff's claim that defendants' improvements are in violation of the zoning ordinance cannot be re-litigated.

Collateral estoppel similarly bars plaintiffs from pursuing her claim for trespass. As stated in plaintiff's complaint, prior to November of 2000, "only the overhang, and no portion of the single story structure encroached onto Karman's property."¹ Once the overhang was removed,² then only a horizontal addition to the structure could trespass on plaintiff's property. In its ruling, the Board made a specific finding that the improvements to the property were vertical and did not extend beyond the previously existing walls. Vertical improvements on a non-trespassing structure cannot bend of their own will into a neighbor's property. Plaintiff's claim for trespass has been precluded by a finding of fact made by the Board.

For the foregoing reasons, I hereby grant summary judgment of dismissal in favor of defendants and this action is dismissed with prejudice.

¹ Amended Complaint, ¶ 9.

² *Id.*, ¶ 12.

IT IS SO ORDERED.

Very truly yours,

A handwritten signature in black ink that reads "William B. Chandler III". The signature is written in a cursive style with a horizontal line underlining the name.

William B. Chandler III

WBCIII:bsr