

<b>Milwest Assoc. v County of Suffolk</b>
2018 NY Slip Op 32430(U)
September 28, 2018
Supreme Court, Suffolk County
Docket Number: 7018/08
Judge: Jr., Paul J. Baisley
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Short Form Order

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

**PRESENT:**  
**HON. PAUL J. BAISLEY, JR., J.S.C.**

INDEX NO.: 7018/08

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MILWEST ASSOCIATES,

DECISION AFTER TRIAL

Plaintiff,

**PLAINTIFF'S ATTORNEY:**  
Reilly, Like & Tenety, Esqs.  
179 Little Neck Road North (Route 109)  
P.O. Box 818  
Babylon, New York 11702

-against-

COUNTY OF SUFFOLK,

**DEFENDANT'S ATTORNEY:**  
Dennis M. Brown, Esq.  
Suffolk County Attorney  
P.O. Box 6100  
Hauppauge, New York 11788-0099

Defendant.

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The dispute in this case concerns the issue of which party has superior title to seven tax lot parcels that are part of 272.33 acres owned by plaintiff and located in the Pine Barrens region within the Town of Southampton, New York. The matter was tried before this Court without a jury over several days from January through March of 2017. After the submission of post-trial memoranda, the case was submitted in April 2017. The parties did not provide the Court with the record of trial testimony.

Plaintiff Milwest Associates ("Milwest") brought this action pursuant to Article 15 of the Real Property Actions and Proceedings Law in order to determine the competing claims to title. Milwest claims superior title based upon a chain of title from a "sovereign source," namely, the Trustees of the Town of Southampton dating to the 18<sup>th</sup> century. Defendant County of Suffolk ("County") asserts that the seven parcels are not located within the 272.33 acres owned by Milwest.

The action commenced with the filing of a summons and complaint in February 2008. Issue was ultimately joined in October 2009 with the filing of an answer which contained general denials and seven affirmative defenses. The County alleges in its fifth affirmative defense that the "lands described [by the tax map numbers of the seven lots] in Schedule A [of the complaint] are not within Milwest chain of title (sic) as alleged in the complaint." The County further alleges in its sixth affirmative defense that plaintiff commenced an earlier, separate action, to wit, *Milwest*

*Associates v County of Suffolk, Assessor of the Town of Southampton, County Treasurer of Suffolk County, et al.*, (Index No. 01-15313), “which encompassed the subject parcel” and was settled pursuant to a so-ordered stipulation of settlement dated November 21, 2005. Milwest refers to the earlier action as the “bar claim action.” Defendant further alleges in its sixth affirmative defense, “[t]he litigation was settled and plaintiff shall not be heard to maintain this claim.”

During the years prior to trial, the plaintiff brought three (3) separate motions seeking summary judgment. The essential argument in each motion was a *res judicata*/estoppel theory resulting from the prior bar claim action which was settled and appeared to include the subject parcel. In the stipulation of settlement, it appeared that the plaintiff had superior title to the seven (7) lots through its chain of title. Furthermore, the defendant stipulated to the superiority of that title and the court then “so-ordered” the stipulation.

Each motion was denied, though, in large part because of the ambiguity of the precise location of the lots in relation to the maps which were attached to and part of the “so-ordered” stipulation of settlement. The ambiguity necessitated a trial during which those maps were introduced into evidence and testimony regarding them was presented by both plaintiff and defendant.

After a careful review of the trial testimony of the three witnesses and the numerous exhibits admitted at trial, it is clear that the location of the seven (7) lots that constitute the subject parcel determines the issue of ownership. However, prior to an analysis of the evidence presented regarding location, it is necessary to address the issue of the chain of title of the subject property.

In the stipulation of settlement in the bar claim action, both Milwest and the County agreed that “title in the subject property is vested in Milwest Associates pursuant to this Stipulation of Settlement and the Certificate of Title of Abstracts, Inc.” The subject property in the bar claim action was described in Schedule A of the underlying complaint and set forth in the stipulation of settlement agreed to by the parties in 2005. Moreover, since within the terms of that stipulation both parties relied on the Certificate of Title of Abstracts, Inc., the subject property was agreed to be within the same chain of title claimed by plaintiff at trial, i.e. the sovereign source from the Trustees of the Town of Southampton.

For the first time in the history of this long and tortured litigation an alternative, competing chain of title theory was introduced by defendant at trial over plaintiff’s strenuous objection. Despite the objection and the belated presentation of the new theory, the court allowed the testimony to proceed in order to provide the County with a full opportunity to be heard and present its evidence.

The County presented the testimony of Donna Waide to establish the alternative chain of



title. Ms. Waide is employed in The Suffolk County Division of Real Property as a 'Land Management Specialist V.' She testified that she is assigned to the 'abstract division' and her duties include researching title issues by using the County's computer systems and comparing the grantor grantee index with tax maps. Ms. Waide then produces reports regarding a chain of title for the County, particularly for properties that are acquired for non-payment of taxes. Ms. Waide averred that in 2008 she was asked by the County Attorney to provide a title report for the subject properties using the above method. That effort culminated in lengthy testimony at trial detailing her conclusions regarding the chain of title pursuant to a theory advanced by the County for the first time at the start of trial.

Principles of collateral estoppel require that this theory be rejected by the Court. The County had the opportunity to litigate their chain of title argument in 2005 when the prior bar claim action was settled. The settlement of the bar claim action was based upon the plaintiff's chain of title produced by Abstracts, Inc. and specifically agreed to by defendant. The defendant implicitly accepted that chain of title by stipulating to settle the bar claim action. If the County had an objection to plaintiff's claimed chain of title it should have raised that objection in 2005. The fact that the issue was resolved in 2005 mandates that the County be prohibited from raising an alternate title theory twelve years later. Accordingly, Ms. Waide's testimony is disregarded.

As set forth by the Court of Appeals in *Parker v Blauvelt Volunteer Fire Co., Inc.* (93 NY2d 343, 349 [1999]):

"Collateral estoppel, or issue preclusion, 'precludes a party from relitigating in a subsequent action or proceeding an issue clearly raised in a prior action or proceeding and decided against that party . . . , whether or not the tribunals or causes of action are the same' (*Ryan v New York Tel. Co.*, 62 NY2d 494, 500; *see also*, *Burgos v Hopkins*, *supra*, 14 F.3d, at 792). The doctrine applies if the issue in the second action is identical to an issue which was raised, necessarily decided and material in the first action, and the plaintiff had a full and fair opportunity to litigate the issue in the earlier action (*Ryan v New York Tel. Co.*, *supra* at 500-501)."

In this action, the issue concerning the chain of title of the subject property is identical to that in the prior action. As noted earlier, the ambiguity of the precise location of the subject property required a trial rather than by a determination on the prior motions. The parties presented the court with two witnesses and an array of maps admitted into evidence to advance or refute their respective claims.

Plaintiff's sole witness was Howard Young, surveyor. Mr. Young is a principal in the surveying firm of Young & Young which has been in business in Suffolk County since the early

1800's. Howard Young is the descendant of a long line of Young family members who have conducted field surveys and mapped the lands in question for generations. The maps relied on by both parties in their November 21, 2005 stipulation of settlement were prepared by Mr. Young's firm over the decades. Mr. Young testified persuasively that the property in dispute at trial was contained within the "subject property" definition as originally set forth in the 2001 bar claim action.

Mr. Young also credibly explained that the variances between precise locations of the subject properties as testified to by the County's witness and his own field survey measurements were the result of the County's reliance on tax maps. According to Mr. Young, tax maps are not as accurate as an actual survey. It also should be noted that Mr. Young's testimony and maps comport with the chain of title relied upon by the parties in 2005 and by plaintiff at trial.

In its effort to establish its claim, the County presented the testimony of Anthony Abruzzo. Mr. Abruzzo, a licensed surveyor, is employed in Suffolk County's Department of Economic Development and Planning. His regular responsibilities consist of various things, including "performing surveying duties and checking deeds." Mr. Abruzzo offered his opinion that the County owns the property in question because of his review of certified tax records that show "the County has been paying taxes on this for a long time."

During cross examination, Mr. Abruzzo admitted that he was unaware of the 2005 'Stipulation of Settlement and Discontinuance With Prejudice' that resolved the prior bar claim and that he never reviewed the title report of Abstracts, Inc. that was relied upon by the County and the plaintiff to settle that case. Mr. Abruzzo was also unaware that the title report of Abstracts, Inc. specifically referred to the property that is the subject of this trial. Moreover, Mr. Abruzzo testified that until this matter came to trial, he was unaware that the County was asserting ownership of the 7 lots in dispute in this trial.

Mr. Abruzzo testified candidly and at times appeared to agree with the testimony of Howard Young regarding the interpretation of the maps in evidence. Ultimately though, Mr. Abruzzo's opinion differed from that of Mr. Young. The court finds the testimony and experience of Mr. Young to be more compelling and therefore agrees with his findings.

Accordingly, the court finds that Milwest owns the 272.33 acres constituting the subject property, including those known under the following seven tax map parcels.

District 0900, Section 246, Block 02.00, Lots 002.00, 004.00, 008.00, 009.00, 010.00 and District 0900, Section 285.00, Block 02.00, Lots 002.001 and 004.000.

Plaintiff's counsel argued that Milwest is entitled to 5.56 Pine Barrens credits if the court finds in its favor. Since no evidence was submitted at trial by either party regarding the issue of Pine Barrens credits, the court does not address the merits of counsel's argument.

Finally, any motions argued during the trial in which a decision was reserved are now specifically denied.

Submit judgment.

Dated: September 28, 2018

HON. PAUL J. BAISLEY, JR.  

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J.S.C.