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As of: March 17, 2017 10:41 AM EDT

[Macklowe v Trustees of Freeholders & Commonality of Town of E. Hampton](#)

Supreme Court of New York, Appellate Division, Second Department

October 23, 2013, Decided

2012-03891

Reporter

110 A.D.3d 964 *; 973 N.Y.S.2d 569 **; 2013 N.Y. App. Div. LEXIS 6770 ***; 2013 NY Slip Op 6840 ****; 2013 WL 5732655

[****1] Lloyd Macklowe et al., Respondents, v Trustees of Freeholders and Commonalty of Town of East Hampton et al., Appellants. (Index No. 8740/08)

Subsequent History: Leave to appeal denied by Lloyd Macklowe v Trustees of Freeholders & Commonality of Town of E. Hampton, 22 NY3d 861, 2014 N.Y. LEXIS 194 (N.Y., 2014)

Prior History: Macklowe v Trustees of the Freeholders & Commonality of the Town of E. Hampton, 34 Misc 3d 1237[A], 950 NYS2d 723, 2012 NY Slip Op 50452[U], 2012 N.Y. Misc. LEXIS 1074 [2012]

Core Terms

southern line, beach grass, non jury trial, trial court, plaintiffs', ambulatory, beach

Headnotes/Syllabus

Headnotes

Appeal—Appellate Division—Standard of Review

Counsel: [***1] Anthony B. Tohill, P.C., Riverhead, N.Y., for appellants.

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

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

Opinion

[*964] [**569] In an action pursuant to [RPAPL article 15](#) to [***2] compel the determination of a claim to real property, the defendants appeal, as limited by their brief, from so much of a judgment of the Supreme Court, Suffolk County (Whelan, J.), entered April 16, 2012, as, upon a decision of the same court dated March 2, 2012, made after a nonjury trial, is in favor of the plaintiffs and against them declaring that the southern boundary of the plaintiffs' property is an ambulatory line defined by the location of the average southerly line of beach grass on the beach of the [*965] Atlantic Ocean, and that the defendants have no title to the lands lying north of such average southerly line of beach grass within the east and west bounds of the plaintiffs' property.

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

"On an appeal from a judgment after a nonjury trial, this Court's power to review the evidence is as broad as that of the trial court, and this Court may render the judgment it finds warranted by the facts, giving due regard to the trial court, which had the advantage of assessing the credibility of the witnesses" ([Rock v Rock](#), 100 AD3d 614, 615-616, 953 NYS2d 165 [2012]; see [Northern Westchester Professional Park Assoc. v Town of Bedford](#), 60 NY2d 492, 499, 458 NE2d 809, 470 NYS2d 350 [1983]; [***3] [Parry v Murphy](#), 79 AD3d 713, 714-715, 913 NYS2d 285 [2010]). Here, the record supports the Supreme Court's determination that the plaintiffs hold title to the disputed lands north of an ambulatory line defined by the location of the average southerly line of beach grass on the beach of the Atlantic Ocean (see [Trustees of Freeholders & Commonality of Town of Southampton v Buoninfante](#), 303 AD2d 579, 580, 756 NYS2d 629 [2003]; see also [Matter of Common Council of City of Brooklyn](#), 73 NY 179, 184 [1878]; [Ryan v Boucher](#), 144 AD2d 144, 145,

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[534 NYS2d 472 \[1988\]](#); cf. [Earl v Smithler, 195 AD2d 969, 600 NYS2d \[**570\] 596 \[1993\]](#)). Accordingly, we decline to disturb the Supreme Court's determination. Skelos, J.P., Dickerson, Hall and Miller, JJ., concur. [****2] [Prior Case History: [34 Misc 3d 1237\[A\]](#), [950 NYS2d 723](#), [2012 NY Slip Op 50452\[U\]](#).]

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