

Riparian Rights/Water Treatment Project: New York Appellate Court Addresses Golf Course's Diminished Flow Claim



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The New York Supreme Court (Appellate Division) (“Appellate Court”) addressed in an August 11th Memorandum and Order (“Memorandum”) an issue involving a judicial action alleging diminished flow of water between two properties. See *Webster Golf, Inc., et al. v. Monroe County Water Authority, et al.*, 2023 WL 5159781.

One of the causes of action addressed in the Memorandum was the extent of riparian rights to certain surface waters.

Webster Golf Club, Inc. (“Webster”) operates a golf club on property owned by B&C Golf, Inc. (“B&C”). A stream is stated to run through the property that feeds ponds on the golf course. It is used to irrigate the golf course.

The stream is fed by two tributaries. One of the tributaries originates on nearby property owned by Monroe County Water Authority (“MCWA”).

MCWA constructed a water supply project. It included the construction of a water treatment plant.

MCWA and B&C entered into an easement permitting MCWA to place a backwash pipe on B&C’s property. MCWA agreed to compensate B&C for damages caused by “installing, maintaining, operating, constructing, or repairing” the pipe.

Webster and B&C filed suit in the Supreme Court (Monroe County, New York)(“Lower Court”) alleging nuisance, public nuisance, negligence, and trespass. They also alleged a de facto taking violation of 42 USC § 1983 and a breach of contract with respect to the easement.

The two plaintiffs alleged:

- MCWA’s water treatment project and the defendants’ design and construction diminished the flow of water from MCWA’s property to the plaintiffs’ stream.
- Construction activities caused silt or sediment to be deposited into plaintiffs’ ponds, thereby reducing their capacity.

An issue addressed on appeal was the Lower Court’s determination that Webster and B&C had riparian rights to the surface waters collecting on MCWA’s property.

The Appellate Court reversed the Lower Court, stating:

. . . The owners of land on a water-course, are not owners of the water which flows in it". . .

It further noted that:

. . . the law has always recognized a wide distinction, between the right of an owner, to deal with surface water falling or collecting on [its] land, and [an owner's] right in the water of a natural water-course". . .

The Appellate Court notes that prior to surface water leaving an owner's land and becoming part of a definite water-course, the owner is deemed to have an absolute property. In such circumstances the owner may appropriate it to its exclusive use, or get rid of it in any way, provided that it is not cast by its drains or ditches, upon the land of its neighbor.

Webster and B&C alleged that MCWA prevented water from flowing off of its property, diminishing the flow into the tributary. This resulted in a diminished flow entering the stream located on Webster & B&C's property. The Appellate Court stated:

Thus, MCWA established, through plaintiffs' own pleadings, that "[t]here was no natural water-course over [its] lot. The surface water, by reason of the natural features of the ground, and the force of gravity, when it accumulated beyond a certain amount ... passed upon, and over" MCWA's property.

Webster and B&C were held to have failed to have raised a triable issue of fact since their submissions described the contested water as "groundwater" and "surface water" that flowed from wetlands on MCWA's property.

MCWA was therefore stated to be entitled to a judgment as a matter of law on this issue which alleged a de facto taking base solely on Webster and B&C's riparian rights and restriction of water flowing into the stream.

To the extent that the plaintiffs' sixth and seventh causes of action were predicated on allegations that MCWA prevented or impeded plaintiffs from exercising their riparian rights, those causes of action were also dismissed.

A copy of the Memorandum can be downloaded [here](#).