

Riparian Encroachment: New Jersey Appellate Court Addresses Adverse Possession Claim



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10/28/2024

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The Superior Court of New Jersey, Appellate Division (“Court”) addressed in an October 4th opinion an issue arising out of an adverse possession action. *See Cozy Cove Marina, Inc. vs. Nelson Properties Partnership*, 2024 WL 4404027.

The adverse possession claim involved an alleged riparian encroachment.

Cozy Cove Marina (“Cozy Cove”) is a marina located on Holly Lake in the Borough of Island Heights (“Borough”). Nelson Marine Basin, Inc. (“Nelson”) operates another marina adjacent to and abutting Cozy Cove. The property at issue is one-third of an acre of water bound property (an alleged riparian encroachment) located within Cozy Cove’s pilings, docks, piers, and catwalks.

The Borough originally owned the one-third acre. However, it conveyed the property along with the rest of Holly Lake to Nelson in 2007. Cozy Cove filed an action in 2021 seeking a declaration of adverse possession against Nelson. A lower court granted summary judgment for Cozy Cove.

Nelson appealed the summary judgment. Three arguments were put forth in support of the appeal:

1. Whether the Borough dedicated or used the riparian encroachment for a public purpose?
2. Whether providing a written notice and demand to Cozy Cove to remove its encroachments qualified as an ejectment?
3. Whether Nelson initiated its lawsuit before the statute of limitations had expired?

To succeed on a claim for adverse possession, the possession must be “exclusive, continuous, uninterrupted, visible, and notorious” during the statutory period. The statutory period in this instance is 30 years.

The Court first determined that no evidence existed to show that the owner of the lakebed, Borough, ever dedicated the lakebed to or for the public use. Further, the public using Holly Lake to access either marina did not convert the lakebed into public property. Therefore, the Court rejected the first argument.

Nelson next asserted that the October 10, 2014, letter sent to Cozy Cove sufficiently tolled the statute of limitations. The letter was argued to have served as an action to eject Cozy Cove.

To properly eject an unwanted occupant of property, the property owner must file a complaint in the Law Division which is then followed by court proceedings.

Nelson was noted to have merely sent the letter to Cozy Cove. This action did not comply with the applicable procedure to effectively eject Cozy Cove. Therefore, the Court rejected Nelson's second argument.

Finally, the Court determined that the thirty-year statute of limitations expired prior to Nelson instituting the present action. Cozy Cove bought the property for the marina from the Borough in 1972. It continually possessed the property thereafter.

Nelson's transmittal of a letter to Cozy Cove did not toll the statute of limitations. Only a proper action for ejectment would do so. Nelson did not file the action for ejectment until October of 2022. Therefore, the thirty-year period had expired.

The Court therefore affirmed the summary judgment in favor of Cozy Cove.

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