

STATE HIGH COURT TO HEAR LOCAL CASE ON BEACH ACCESS

Date: 041018

From: <http://www.pressofatlanticcity.com/>

By Richard Degener, The Press of Atlantic City, October 16, 2004

The state's highest court will decide how much private beach the public is entitled to - and at what cost.

These are only two of the issues before the New Jersey Supreme Court as it becomes the latest court to deal with a case that pits a group of Diamond Beach homeowners against a private beach club.

The Raleigh Avenue Beach Association in 2002 filed suit against the Atlantis Beach Club over beach fees that totaled \$700 per family. They claimed the club was doing whatever it could to keep them off the beach.

The case, which has wound its way through the lower courts, centers on the ancient Public Trust Doctrine that dates back 15 centuries to a Roman emperor. This is not the first time the courts have interpreted how the doctrine affects access to privately-owned beaches, but as the latest case, it is being followed very closely. A group in California is even filing a brief in the case.

"It will decide the extent of the applicability of the Public Trust Doctrine. It's about the public having reasonable and meaningful access to the beach," said Princeton attorney Stuart Lieberman, who represents the homeowners.

Lieberman argues that high beach fees can be no different than putting up a fence. He's hoping the seven justices affirm a major victory he won at the Appellate Division when his clients won sweeping access rights and lower beach fees set not by the owner of the beach but by the state Department of Environmental Protection.

The club had been charging \$700 for a family per season, or they could buy an easement for \$10,000. The DEP reduced a season pass to \$55 and required a daily beach badge at \$3. It was the first case that regulated beach fees under the state's CAFRA (Coastal Area Facilities Review Act) law administered by the DEP.

The Atlantis Beach Club questioned the DEP jurisdiction and protested the new fee schedule. Atlantis attorney Chad Sherwood on Friday said the club lost money this summer with the new fee schedule. Sherwood said the club also disagrees with the appellate decision that gave the public transit rights to a large area of what is known as the dry sand. A lower court ruling had only given the public rights to the wet sand and a thin strip of dry sand just above the mean high water line. Sherwood said the appellate judges rewrote the Public Trust Doctrine.

"My client owns the property and is being told the only thing he can do with it is run a beach club that is losing money," Sherwood said.

The doctrine has been imposed many times as people fought for beach rights. Years ago it was used to reduce beach-badge fees at public beaches in New Jersey to make them more affordable. The Atlantis Beach Club case gave the public more rights than ever before at private beach clubs. Sherwood said many beach clubs are following the case.

"We know of quite a few other beach clubs in New Jersey that charged a lot more than we charged before this litigation. This could set a precedent in other states as well," Sherwood said.

That is the hope of Robert Garcia, of the California group Center For Law and the Public Interest. Garcia is fighting a similar case in California, in Malibu, where wealthy homeowners are trying to keep the public off the beach, and he plans to file a brief in support of the Raleigh Avenue Beach Association.

"One strand of the Public Trust Doctrine can be traced to navigable waters. The coast belongs to all the people. The beach belongs to all the people," Garcia said.

Sherwood argues the doctrine has nothing to do with people getting a suntan. He said it was written so a boat in trouble could not be denied a safe landing on any shore it could reach.

Garcia argues the doctrine has new applications today.

"The courts have extended the Public Trust Doctrine to pleasure," Garcia said.

The Sandy Hook-based America Littoral Society has also entered the case in support of the Raleigh Avenue residents.

"We agree with the Appellate Division that the upland beach (dry sand) is subject to the doctrine," said ALS attorney Gordon Litwin.

The society also agrees the DEP should regulate beach fees at private beach clubs.

"We think the DEP is the logical choice under the structure of the law, through CAFRA, and it's a sensible solution to the issue," Litwin said.

News that the Supreme Court certified the case did not surprise members of the association. Dan Sierchio said when the residents first got together and met with Lieberman, the Princeton attorney told them it would take years to resolve and would eventually get to the state's highest court.

"He predicted it," said Sierchio. "This issue is so important, not only to New Jersey but anywhere on the water, so it's something the high courts like to review."

A court date is not set yet. The justices will review the court record from earlier cases, but Sherwood did not rule out submitting some entirely new arguments.

"Generally, they review only documents submitted to the Appellate Division, but we can submit a motion for new documents," Sherwood said.

Lieberman is telling his clients they will probably get a final decision in this court - probably.

"It could go to the U.S. Supreme Court. Only time will tell," he said.

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