

ANNE MILGRAM, ATTORNEY
GENERAL OF NEW JERSEY, et al.

Plaintiffs,

v.

D. LOBI ENTERPRISES, et al,

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MONMOUTH COUNTY

DOCKET NO. C-296-06

Civil Action

CONSENT JUDGMENT BETWEEN
PLAINTIFFS AND DEFENDANT BEACH
CLUB HOLDINGS, LLC
(PLEAD AS RIVER TO OCEAN, LLP)

WHEREAS, in 1993, the State of New Jersey and the Borough of Sea Bright entered into three-party agreements with Defendant River to Ocean, LLP (now known as Beach Club Holdings, LLC), t/a Ship Ahoy, Inc. ("Ship Ahoy Beach Club") and eight other beach clubs in the Borough of Sea Bright in connection with a joint federal, state and municipal shore protection project (the "1993 Agreements"); and

WHEREAS, in the 1993 Agreements, Defendant Ship Ahoy Beach Club and the other beach clubs agreed that the clubs would provide to the State of New Jersey the construction access easements necessary for the project and that public use of the beach in front of the Ship Ahoy Beach Club and the other beach clubs would be limited to a 15-foot-wide limited use corridor; and

WHEREAS, on September 22, 2006, Plaintiffs filed suit against Defendant Ship Ahoy Beach Club and others in the Superior Court of New Jersey, Chancery Division, Monmouth County; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint allege that the terms of the 1993 Agreements limiting public access to a 15-foot wide limited use corridor are contrary to law and

public policy, i.e., the Public Trust Doctrine as clarified by the New Jersey Supreme Court's decision in Raleigh Ave. Beach Ass'n v. Atlantic Beach Club, Inc., 185 N.J. 40 (2005) and by other court decisions; and

WHEREAS, Counts I and II of the Plaintiffs' Complaint seek to reform the 1993 Agreements to obtain additional public access to the dry sand in front of Defendant Ship Ahoy Beach Club and the other Defendant beach clubs; and

WHEREAS, Defendant Ship Ahoy Beach Club has denied the material allegations of Plaintiffs' Complaint; and

WHEREAS, Plaintiffs and Defendant Ship Ahoy Beach Club have engaged in an extensive mediation process conducted by Former Chief Justice James Zazzali (the Mediator); and

WHEREAS, in the interest of resolving all claims between them in this litigation, Plaintiffs and Defendant Ship Ahoy Beach Club now agree to settle this matter in accordance with the following terms; and

WHEREAS, Plaintiffs have determined, based on an evaluation of all relevant facts and circumstances, including but not limited to the existence of the 1993 Agreements, that the settlement set forth herein is in the public interest and furthers the Public Trust Doctrine as set forth in the New Jersey Supreme Court's decision in Raleigh Ave. Beach Ass'n v. Atlantic Beach Club, Inc., 185 N.J. 40 (2005) and other legal opinions post-dating 1993 that the State believes have clarified public rights of access to and use of the shores of tidal waterways; and

WHEREAS, the Mediator has advised the court that, in his opinion, this Consent Judgment is consistent with the Public Trust Doctrine and is in the public interest.

NOW THEREFORE, IT IS on this ____ day of _____, 2009, ORDERED AND ADJUDGED THAT:

1. PUBLIC USE AREA

a. The 15-foot limited use corridor provided for in Paragraphs 3(a)-(b) of the 1993 Agreement between the State of New Jersey, the Borough of Sea Bright, and Defendant Ship Ahoy Beach Club will be replaced by a full public use area of 60% of the Beach (as hereinafter defined), up to a maximum of 150 feet, extending landward from the Annual Mean High Water Mark. As used herein, the Beach shall mean the area between the Erosion Line, as defined in blue on Exhibit A attached hereto (aerial map dated August 2009), and the Annual Mean High Water Mark. The 2009 Mean High Water Mark is shown in magenta on Exhibit A. For the remainder of the term of this Consent Judgment, the Annual Mean High Water Mark will be identified on June 15 annually. Defendant Ship Ahoy Beach Club shall retain exclusive use and control over the beach area landward of the public use area of the Beach provided for herein.

b. In the event of any future beach fill by the federal, state and/or municipal governments, the public use area will include (1) the area outshore of the 2009 Mean High Water Mark, and (2) 60% of the area between the Erosion Line and the 2009 Mean High Water Mark, up to a maximum of 150 feet, extending landward from the 2009 Mean High Water Mark.

c. Ship Ahoy Beach Club will continue to allow the public to cross the jetty at the northern boundary of the club so as to enable public access to the public use area provided for in this Paragraph 1.

d. Nothing in this Consent Judgment limits the right of the members of the Ship Ahoy Beach Club and their guests to access the foreshore, the ocean, and the public use area and

to otherwise enjoy in said areas any and all rights and privileges they currently have as beach club members.

e. The public use area may be marked by stakes or by modest signage, but it is not to be delineated by ropes, fences, or the like.

f. Notwithstanding any provision contained herein to the contrary, the Plaintiffs or Defendant may suspend the public-access provisions in Paragraphs 1(a)-(b) of this agreement when the mean high water line for a majority of the beach (defined as greater than 50% of the Defendant's oceanfront footage measured from north to south) has reached the Erosion Line (the blue line on Exhibit A) and remains so for a period of thirty (30) consecutive days. This suspension may continue until the then-current mean high water line for the majority of the beach, as defined above, is entirely seaward of the Erosion Line and remains so for a period of at least thirty (30) consecutive days. If either the Plaintiffs or Defendant Ship Ahoy Beach Club elects to exercise its suspension rights under this provision, public access to the beaches at Defendant Ship Ahoy Beach Club's property during this suspension will revert to the 15-foot wide limited use corridor of the 1993 Agreements.

g. The public use area shall be deemed premises upon which public access has been required by agreement with the Department of Environmental Protection pursuant to N.J.S.A. 2A:42A-8. Any member of the public (other than a Beach Club member and their guests) entering upon or using the public use area shall be deemed a person entering or using the land for a use or purpose related to public access purposes within the meaning of N.J.S.A. 2A:42A-8.c. The purchase of a beach badge from the Borough of Sea Bright shall not be deemed a consideration paid to the Ship Ahoy Beach Club, and hence any member of the public engaging

in sport or recreational activity in the public use area shall not be deemed to have been granted permission for a consideration within in the meaning of N.J.S.A. 2A:42A-8.e.

2. THE 1993 AGREEMENT AND THE CONSTRUCTION EASEMENT

a. By the terms set forth above, Paragraphs 3(a)-(b) of the 1993 Agreement are superseded by this Consent Judgment and shall be of no further force and effect. The remaining provisions of the 1993 Agreement, including the construction easements granted to the State therein, will remain in effect for the duration of this Consent Judgment. Upon the expiration of this Consent Judgment, all remaining provisions of the 1993 Agreement shall be of no further force and effect. To the extent that there are any conflicts between the terms of the 1993 Agreement and this Consent Judgment, the terms of this Consent Judgment shall govern.

3. DURATION OF CONSENT JUDGMENT

a. This Consent Judgment shall remain in full force and effect until October 15, 2039.

4. ADDITIONAL PUBLIC ACCESS AMENITIES

a. Defendant Ship Ahoy Beach Club will contribute \$30,000 for the construction of public-access amenities. This contribution shall be paid in two (2) installments of \$15,000 each with the first installment being due within ten (10) business days of the date that this Consent Judgment is entered. The second installment shall be paid on the one-year anniversary of such date. This money will be designated to a Sea Bright Public Access Fund. This Fund will be managed by the State and used to finance public-access improvements in the Borough. The improvements sought to be constructed will first be identified by the State, in coordination with the Borough and in consultation with Amici Curiae American Littoral Society and Citizens Right to Access Beaches, and representatives of the Sea Bright beach clubs, which will not exceed two

in number. The Borough will have final input on acceptance of any amenity to be constructed on Borough property, and when construction is completed and accepted by the Borough Council by Resolution, the Borough will thereafter be responsible for the operation and maintenance of the improvements. Except for the payments required under this Paragraph 4, Ship Ahoy Beach Club shall have no obligations of any type or kind with respect to such amenities.

5. FUTURE REGULATORY APPROVALS

a. Plaintiff State of New Jersey, Department of Environmental Protection, will not impose any public access requirements as a term or condition of any permits or approvals it issues to Defendant Ship Ahoy Beach Club for normal beach maintenance, pool maintenance, typical beach club operation activities, seasonal structures, and repair, reconstruction, or expansion of any beach club structure within the existing footprint, excepting only the requirement that Defendant Ship Ahoy Beach Club comply with this Consent Judgment.

b. The Department of Environmental Protection will settle the pending administrative appeal by Defendant Ship Ahoy Beach Club, Office of Administrative Law Docket No. ELU 8404-07. This Consent Judgment is contingent upon the Department's issuance of a modified permit in accordance with the terms of the settlement of Defendant's pending administrative appeal. In the event the Department does not issue a modified permit within 180 days of entry of this Consent Judgment, this Consent Judgment shall be vacated, the complaint and answer with defenses reinstated, and the matter shall be scheduled for trial. The Department agrees that no enforcement action will be taken on the permit conditions challenged by Defendant in the administrative appeal pending the issuance of a modified permit.

6. MISCELLANEOUS

a. Beach Badges and Fees: Except for members of Defendant Ship Ahoy Beach Club and their guests, municipal beach badges will be required in public-use areas in front of Defendant Ship Ahoy Beach Club if the club elects to provide lifeguards and beach cleaning services. Ship Ahoy Beach Club shall have no obligation to provide any services in connection with the public's access, occupancy and use of the Beach and/or the ocean including, without limitation, provision of lifeguards or other safety personnel, and cleaning and maintenance. To the extent that Ship Ahoy Beach Club provides any such services in the public-use area and/or the ocean, Ship Ahoy Beach Club will provide them equally to members and non-members alike. The Borough shall take reasonable steps to ensure the availability of municipal beach badges on its website and at the municipal beach. This reflects the limit of the Borough's responsibility in this regard. Should the Borough and the Beach Clubs strike some additional arrangement for the sale of Municipal Beach Badges in the future, such arrangement is wholly voluntary.

b. Regulation of the Public-Use Area: The public-use areas in front of the Ship Ahoy Beach Club will be considered unsupervised municipal beaches and will be governed by the rules that apply to supervised and unsupervised municipal beaches in the Borough of Sea Bright and reasonable non-discriminatory rules that Ship Ahoy Beach Club applies equally to all users of the beach in front of Ship Ahoy Beach Club, both members and non-members alike, concerning the prohibition or other restrictions on the following: smoking; possession and consumption of alcoholic beverages; use of electronic devices (e.g., radios, CD players, iPods, MP3 players) without earphones; ball playing; use of the beach during beach cleaning operations; swimming or wading outside of designated guarded areas; swimming or wading when lifeguards are not on duty; use of surf boards; littering; use of china, glassware or other

breakable or metallic utensils; use of glass bottles; unattended children under 12 years of age; disrespectful or dangerous behavior, horseplay or foul language; lewd or indecent conduct or attire; gambling; and fishing in bathing areas during such hours that the club designates for bathing. The beach club may install modest signage to identify the rules applicable to the public-use areas in front of the club.

c. In the event Ship Ahoy Beach Club wishes to adopt rules or regulations other than those specified above, it shall give written notice to the Plaintiffs, and unless Plaintiffs provide Ship Ahoy Beach Club with written objection to such rules within 30 days, those rules shall be deemed acceptable and enforceable. In the event Plaintiffs provide written notice of objection within 30 days, the Plaintiffs shall present the matter to this Court by way of motion pursuant to R. 1:10 to decide whether said rule is reasonable and consistent with the public trust doctrine, which decision may be made in a summary manner. In the event of an appeal, the decision of this Court shall be upheld so long as it is not arbitrary, capricious or unreasonable.

d. Tidelands Grants: Nothing herein shall affect the validity of existing State tidelands grants held by Defendant Ship Ahoy Beach Club.

e. Modification of Agreement: No modification of this agreement will be effective without the written approval of the Plaintiffs and Defendant Ship Ahoy Beach Club.

f. This agreement may be executed in counterparts.

7. REVIEW AND APPROVAL BY THE COURT

a. The Court has reviewed this Consent Judgment and finds and declares that this Consent Judgment furthers the Public Trust Doctrine and is in the public interest.

Hon. Thomas W. Cavanagh, Jr., P.J. Ch.

The undersigned hereby consent to the form and entry of this Consent Judgment.

ANNE MILGRAM, ATTORNEY GENERAL,
STATE OF NEW JERSEY

Date: _____

By: _____

STATE OF NEW JERSEY, DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Date: _____

By: _____

BEACH CLUB HOLDINGS, LLC T/A SHIP
AHOY, INC.

Date: _____

By: _____

BOROUGH OF SEA BRIGHT

Date: _____

By: _____