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Court gets day at the beach for a property in dispute

Judge tours Loch Arbour site of neighbors' battle over public access

By MARYANN SPOTO
STAR-LEDGER STAFF

Two years after police escorted her off the beach in Loch Arbour on a trespassing charge, Sophie Bubis finally had her day in court - or at least on the beach - yesterday.

In the continuing battle between Bubis and her neighbor Jack Kassin, Superior Court Judge Alexander Lehrer yesterday toured the property to get a better understanding of a decade-long dispute over public beach access in this tiny Monmouth County community.

Kassin, who lives in Deal, bought the property, a former beach club, in 1995 and for the most part has restricted public access to the beach in front of the building there. He doesn't live there, but he uses it for gatherings with friends and family.

Kassin insists his property runs down to the water line and because of that delineation, he prohibits anyone from placing their chairs or towels there. He set aside a section to the north for the overflow of beachgoers to the adjacent municipal beach on crowded summer days.

Bubis, who lives across the street, contends Kassin's property does not extend down to the water line and that Kassin is stopping the public from sitting on property that is not his. On June 27, 2004, she was escorted off the beach by a police officer and issued a municipal summons for trespassing.

She is challenging the trespassing charge by claiming she has a right to be there.

"I'm asking for . . . a little bit of dry sand so when the water comes up, my blanket, my chair, doesn't get wet," Bubis told the judge.

But Kassin's attorney, David Apy, contends his client doesn't have to allow the public on his property because there are other public beaches close by.

"The issue is, we don't believe they established there is a need to use private property," Apy said after the hour-long visit.

Loch Arbour has about 950 feet of coastline, 650 feet of which Kassin claims.

Lehrer heard testimony in his courtroom in Freehold on May 8 but said he wanted to visually inspect the property at the center of the long-running dispute. Yesterday, Lehrer, dressed in jeans, a zip-up collared sweatshirt and two-tone Hush Puppies, tromped through the sand to see where Bubis sits, where Kassin allows the Loch Arbour beach patrons to spill over onto his property and how Bubis gets to the beach.

Besides walking north to Loch Arbour's public beach, the judge hiked south to adjacent Asbury Park, where, Kassin has argued, there is plenty of open space.

At one point, Lehrer asked Bubis whether she was creating a hardship for herself by taking a lengthy route to sit in front of Kassin's beach club to the south instead of heading for the section he makes available at times to the public on the northern end.

Bubis began to outline her case.

"I know your point," Lehrer told her. "That's not the point I'm trying to make."

The state has filed a friend-of-the court brief asserting that Kassin has no right to claim ownership of the strip of dry sand above the water line and has urged Lehrer to rule that Kassin and his wife, Joyce, cannot limit the use of that strip of sand, often referred to as the foreshore. "The property owner here has no property interest in any portion of the foreshore," Deputy Attorney General Lisa Daglis wrote. "Nevertheless, he contends the public does not have a right to use and enjoy the foreshore or any part of upland sand."

This case is the third leg of Bubis' litigation against Kassin. When he bought the property, he closed off a public walkway to the beach. She took him to court and he was forced to build a public path to the south end of his land.

Bubis also objected to Kassin's creation of a sand dune lined with trees for privacy. She said it was illegally constructed and blocked her view of the ocean. After she appealed lower court rulings in Kassin's favor, the state Supreme Court ordered him to take down the tree-lined berm. He has applied to the village planning board for the right to lower the height of the berm.

For now, Kassin and Bubis have been following a consent order allowing Bubis to sit on a strip of sand just above the water's edge. Lehrer kept that in effect for the beginning of this summer until he makes a decision, which should come in mid-June, Apy said.

PHOTO CAPTION: 1. Monmouth County Superior Court Judge Alexander Lehrer listens to property owner Sophie Bubis talk about her Loch Arbour property dispute with neighbor Jack Kassin. She was accompanied by her attorney, Leonard Needle, right. 2. Loch Arbour beachfront property-owner Jack Kassin contends he can keep neighbor Sophie Bubis and the public from sitting in front of his building on the beach.

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