

Nicholas P. Gilman and Patti A. Gilman, h/w and JOSEPH MURRAY and JOSIE ESQUIVIEL h/w,

Plaintiffs,

-vs-

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
OCEAN COUNTY  
Docket No.: C-249-98

SOPHIA SPICKERS, her heirs by  
And for her personal  
Representatives, his, their, or  
any of their successors, in right  
title and interests, MARGARET  
WILLIAMS, MR. WILLIAMS,  
husband of MARGARET  
WILLIAMS and ARTHUR L.  
STRICKLAND, JR., MRS. ARTHUR  
L. STRICKLAND, GERALD  
STRICKLAND, RENEE STRICKLAND  
KAPP, MR. KAPP, husband of RENEE  
STRICKLAND KAPP, JOHN J. HALEY,  
COMMISSIONER, by and for NEW  
JERSEY DEPARTMENT OF  
TRANSPORTATION, THE  
BOROUGH OF BAY HEAD, THE  
PLANNING BOARD OF THE BOROUGH  
OF BAY HEAD, WILLIAM GAAL, MARIA  
GAAL, h/w, DEAN CETRULO and  
MARION CETRULO, h/w,

Defendants.

---

**ARBITRATORS SECOND SUPPLEMENTAL DECISION**

---

RIDER TO DECISION

I find that the Cetrulo's and Gaal's, acting in concert, interfered with the ability of surface waters to follow their historical course of flowing westward on the alleyway between Main Street, on the east, and the N.J.D.O.T. Right of Way on the west. They took the action of installing fill material, planting walls and vegetation in the alleyway adjacent to their properties, resulting in a damming or barrier against the previous flow of water from the east to west.

It was brought to my attention in or around April 2003, that the Gaal's had attempted to obtain title to the driveway adjacent to their land by obtaining various conveyances from an heir and trustee of the Spickers. I mention this only to acknowledge their action. I find it has no impact on my prior rulings or present position in this matter. In particular, it has no ability to detract from my fashioning an equitable remedy in this matter. I decline to make any determination as to the "legality" of the purported conveyances and will not make any direction or recommendation as to how the municipality should proceed for tax purposes. I have concluded, nonetheless that it does not give the Gaal's sufficient interest or right to obstruct or alter the water flow in the 15 foot alleyway.

I also decline to take any action with regard to the N.J.D.O.T. Right of Way which has also been altered and changes to the detriment of the parties to this action. This alteration and its consequences is a governmental and community problem to be remedied through political or legal action not within the realm of my present involvement.

I am satisfied that the only available and/or effective remedy at this time is for complete restoration of the alleyway to its prior grade along the boundaries of the Cetrulo and Gaal properties. When restoration has been completed the grade shall not be diminished by subsequent resurfacing or the like. It may, however, be further graded with proper governmental approvals to improve drainage flow to the west. It appears quite likely that the restoration being ordered may cause the Gaal's and Cetrulo's to seek permission to remediate conditions on the N.J.D.O.T. Right of Way because of the water flow being restored to its westward path.

Restoring the previous grades to the alleyway along the Cetrulo and Gaal properties will require technical work and stakings, the reasonable cost of which they must bear. No estimates for this technical work have been submitted to me.

Inasmuch as I expect that the work will also require technical supervision as it progresses the reasonableness of the cost incurred can be reviewed after completion if it becomes a matter of dispute. I would not anticipate that the cost should exceed \$3,000.00.

The parties have submitted widely divergent estimates as to the cost of removal and disposal of the material in the alleyway easement adjacent to the Cetrulo and Gaal properties. The estimates range from \$9,200.00 to less than \$1,000.00. Even estimates from the same contractor, Charles Paul, varied from \$1,400.00 on defendants' estimate dated March 31, 2003 to \$7,900.00 on plaintiffs' estimate dated, April 3, 2003. The later estimate includes an un-



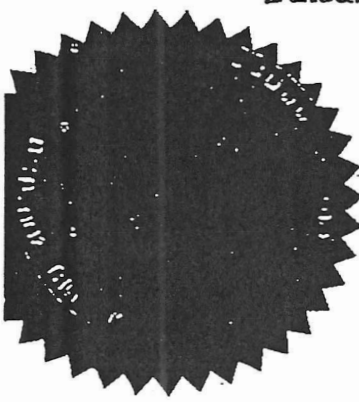
itemized expense for "3/4 washed stone and spread." This additional work is not however, authorized by my decision. In any event defendants shall be responsible for the reasonable cost of removal and disposal of this material, according to accurate and supervised grading. The cost of removal shall not exceed \$6,000.00. In the event the charge is disputed by the parties after submission of the contractor's final and itemized bill, the issue may be presented to me for resolution.

It is my view that work should commence promptly and with confirmation of my directions by Order of the Superior Court, Chancery Division. I have considered the plaintiffs' request for counsel fees and costs. Although I recognize in the circumstances presented that I have the authority to grant the relief requested, I decline to do so based upon my careful consideration of all the facts and circumstances involved in this matter.

Respectfully Submitted,

*Thomas Shebell Jr.*  
THOMAS F. SHEBELL, JR.  
Arbitrator

Dated: July 3, 2003



I, KENNETH W. KERWIN ACTING DEPUTY CLERK OF THE SUPERIOR COURT OF NEW JERSEY, THE SAME BEING A COURT OF RECORD, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE COPY OF THE *EXHIBIT* ATTACHED TO *MORBINOW* ON FILE IN MY OFFICE. *TO CONFIRM ARB SWARD* IN TESTIMONY WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED THE SEAL OF SAID COURT AT TOMS RIVER THIS DAY OF *May, 2007* *10th*

*Kenneth W. Kerwin*  
ACTING DEPUTY CLERK SUPERIOR COURT

FILED

SEP 26 2003

JUDGE SERPENTELLI'S CHAMBERS  
SUPERIOR COURT OCEAN COUNTY

WILBERT, MONTENEGRO & THOMPSON, P.C.

531 Burnt Tavern Road

P.O. Box 1049

Brick, NJ 08724

(732) 295-4500

Attorneys for Plaintiff

②

NICHOLAS P. GILMAN and PATTI A.  
GILMAN, h/w, and JOSEPH MURRAY  
and JOSIE ESQUIVIEL, h/w,

Plaintiffs

vs.

SOPHIE SPICKERS, her heirs, by and for  
her personal representatives, his, their or  
any of their successors, in right, title and  
interests, MARGARET WILLIAMS, MR.  
WILLIAMS, husband of MARGARET  
WILLIAMS, and ARTHUR  
STRICKLAND, GERALD STRICKLAND,  
MRS. GERALD STRICKLAND, RENEE  
STRICKLAND KAPP, MR. KAPP,  
husband of RENEE STRICKLAND, JOHN  
J. HALEY, COMMISSIONER, by and for  
NEW JERSEY DEPARTMENT OF  
TRANSPORTATION, THE BOROUGH  
OF BAY HEAD, THE PLANNING  
BOARD OF THE BOROUGH OF BAY  
HEAD, WILLIAM GAAL, MARIA GAAL,  
h/w, DEAN CETRULO and MARION  
CETRULO, h/w

Defendants.

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION: OCEAN COUNTY

DOCKET NO. OCN-C-249-98

CIVIL ACTION

ORDER

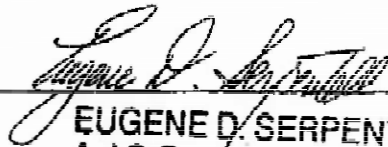
THIS MATTER having been opened to the Court by the plaintiffs, and Scott D. Thompson, Esq. of the law firm of Wilbert, Montenegro & Thompson, P.C. and the defendants, represented by Frederick Popovitch, Esq. of Popovitch & Popovitch, and the Court having considered the pleadings; and for other good cause shown;

IT IS on this 26<sup>th</sup> day of Sept., 2003 ORDERED

1. That the arbitration award of July 3, 2003, is hereby confirmed; and
2. Counsel fees and costs of suit ~~in the amount of \$ \_\_\_\_\_~~ <sup>are denied since the arbitrator</sup> ~~are to be~~ <sub>awarded to plaintiffs.</sub> <sup>found they should not be awarded.</sup>

IT IS FURTHER ORDERED, that a copy of this Order be served upon all counsel within seven (7) days of receipt of same by attorneys for plaintiffs.

DATED: September 26  
~~August~~, 2003

  
EUGENE D. SERPENTE  
A.J.S.C.

\_\_\_\_\_ opposed

\_\_\_\_\_ unopposed