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August 5, 2024

VIA ELECTRONIC FILING

Heather Joy Baker
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
P.O. Box 970
Trenton, NJ 08625-0970

Re: In the Matter of P.T. Jibsail Family Limited Partnership
Tidelands License Number 1515-06-0012.1 TDI190001
Docket No. 089547
Appellate Division Docket No. A-00699-22

Civil Action: On Petition for Certification from the Superior
Court, Appellate Division

Sat Below: Hon. Jessica R. Mayer, J.A.D.
Hon. Lorraine Augostini, J.A.D.
Hon. Mary Gibbons Whipple, J.A.D.

Letter Brief on Behalf of Respondent State of New Jersey in
Opposition to Petition for Certification

Dear Ms. Baker:



Please accept this letter brief on behalf of Respondent, State of New Jersey in opposition to the petition for certification of Petitioner, P.T. Jibsail Family Limited Partnership (Jibsail), in the above matter. The State also relies upon its merits brief, filed in the Appellate Division, and copies of which the State filed with this Court.

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PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Tidelands are “all lands underwater below the mean high water mark.” In re Tideland’s License 96-0114-T, 326 N.J. Super. 209, 212 (App. Div. 1999). The State of New Jersey owns all tidelands in the State's territory. Through the Tidelands Act, N.J.S.A. 12:3-1 to 12:3-71, the Legislature authorized the Tidelands Resource Council (TRC) to regulate land use in those environmental important lands by issuing grants and licenses.

Since 1988, Petitioner, Janine Morris Trust (JMT), has owned 85 Pershing Boulevard in Lavallette where JMT and its predecessors have enjoyed use of a six-foot wide licensed and permitted recreational dock extending about 100 feet into Barnegat Bay, and an associated dredging permit that allows JMT to dredge a thirty-by-ninety foot area to a depth of four feet below mean low water around the end of their dock. Respondent, Jibsail, holds title to the neighboring property located on 83 Pershing Boulevard (Jibsail Property). IMO P.T. Jibsail Tidelands License Number 1515-06-0012.1 TDI190001, A-0699-22 (App. Div. May 8, 2024) (slip op.). at 24.

In 2006, the New Jersey Department of Environmental Protection

¹ Because they are closely related, these sections are combined for efficiency and the court’s convenience.

(NJDEP) issued a permit to Jibsail's predecessor in title that allowed it to construct a 4 x 128-foot-long dock. Id. at 3-4. This waterfront development individual in-water (WD) permit also required the holder to obtain a tidelands grant, lease or license from the TRC. Id. at 4. In 2007, the TRC approved a seven-year tidelands license to allow for the construction of the dock on the Jibsail Property. Ibid. This license was assigned to Jibsail on March 22, 2013. Id. In 2015, the TRC issued a ten-year renewal of the Jibsail tidelands license. Id.

On May 19, 2017, the NJDEP granted Jibsail a WD permit (Initial Permit) to construct a 167.3 foot-long extension of its dock. Ibid. As a condition precedent, Jibsail had to obtain a permit from the Army Corps of Engineers (ACE) and a separate tidelands license from the TRC. Id. at 4-5. ACE authorized the Initial Permit on August 17, 2017, and the TRC issued a tidelands license on March 8, 2018 (Initial License). Id. at 5. The initial dock extension was constructed by May 2018, but it was 1.7 feet out of compliance with the submitted plans of the WD Initial Permit, ACE approval, and the TRC Initial License that allowed its construction. Ibid.

After discovering that the Jibsail dock had not been constructed in compliance with the Initial Permit and the Initial License, NJDEP and ACE directed Jibsail to either remove the non-compliant structures or seek approval

of the as-built structure. (Rb8, -9). On November 1, 2018, Jibsail applied to the NJDEP for approval of the as-built structure, which was ultimately approved (Modified Permit). (Rb9). On April 1, 2019, Jibsail applied to the TRC for a license modification to correct the as-built error. Ibid.

On August 17, 2019, ACE authorized the dock extension as constructed. Jibsail applied to the TRC to modify the Initial License to align with the Modified Permit. Jibsail, slip. op. at 6. JMT voiced opposition to the application at a March 4, 2020, Council meeting. Ibid. The Council reserved decision pending additional information and briefing from the parties. Ibid. (Rba 2-24; 60-72).²

The TRC approved Jibsail's application (Modified License) at a meeting on September 14, 2022. Ibid. On October 6, 2022, the Assistant Commissioner of Watershed and Land Management approved the TRC's meeting minutes and resolution memorializing Jibsail's license details, thus effectuating Jibsail's Modified License. Ibid.

Petitioner appealed arguing, among other things, that the Jibsail Modified License infringed upon its existing riparian and/or navigation rights and that the

² The following short form references to the briefs and appendices filed in the Appellate Division matter are used throughout: "Pb" denotes Petitioner's Brief; "Prb" denotes Petitioner's Reply Brief; "Rb" denotes Respondent State's Brief; and "Rba" denotes Respondent's Brief Appendix.

TRC lacked statutory authority to approve Jibsail Modified License. (Prb5-6). It claimed that the pierhead line³ represented the outer limits of the TRC's jurisdiction, and that the TRC's approval of the Jibsail Modified License was ultra vires because the dock it extends beyond the pierhead line. (Pb9-12). In support, Petitioner submitted a tax map purportedly representing a fixed pierhead line and argued that the TRC lacked authority to alter those pierhead lines by approving Jibsail's Modified License. (Pb11; Prb at 5-6).

On May 8, 2024, the Appellate Division affirmed in an unpublished opinion, Jibsail, slip. op. at 24, that Petitioner was a licensee and not a grantee and that while tidelands grantees have fee ownership rights of the tidelands that typically extended to the pierhead line, tidelands licensees have only rental rights over a specified "license box." Jibsail, slip. op. at 19-24. Accordingly, the panel found that Petitioner's license gave it no rights beyond those it shared with the general public in the area outside of its license box or any cognizable

³ "Pierhead line" refers to the exterior line, established from time to time by the Council around the State including around islands, reefs, and shoals of the waters of the State, "beyond which no permanent obstruction of any kind shall be made or maintained." N.J.S.A. 12:3-20. When fixing exterior lines in front of riparian grants issued prior to 1891, i.e. prior to the statewide repeal of the Wharf Act, the TRC must first consult with the Army Corps of Engineers and determine if the line "so fixed and established" in front of those prior grants "leaves sufficient waterway in front of said grants for navigation" before ultimately establishing the line. N.J.S.A. 12:3-20.

rights regarding the Jibsail Modified License. Id. at 21.

The panel also found that the TRC had clear statutory authority approve Jibsail Modified License because of its power to “from time to time, fix and establish, around or in . . . the tidal waters of this State, exterior lines in said waters beyond which no pier . . . or obstruction of any kind.” Id. at 22 (quoting N.J.S.A. 12:3-19).

On May 20, 2024, JMT filed a motion for reconsideration which the Appellate Division denied. On June 21, 2024, JMT filed the present petition for certification with the Supreme Court of New Jersey.

ARGUMENT

THE PETITION SHOULD BE DENIED AS IT DOES NOT RAISE AN UNSETTLED QUESTION OR A QUESTION OF GENERAL PUBLIC INTEREST.

TRC’s decision to approve Jibsail’s Modified License was a reasonable exercise of its regulatory power and warrants no further review. Petitioners claim this case presents an unsettled question of law regarding the TRC’s statutory authority. (Pb6). However, their argument is based on a misreading of the Appellate Division’s reasoning, and a fundamental misunderstanding both about the limited scope of its rights as a licensee and TRC’s broad authority “to determine whether applications for the lease, license, or grant of riparian lands

are in the public interest.” N.J.S.A. 12:3-12.1.

This Court will grant a petition only for “special reasons.” R. 2:12-4. Certification should not be granted unless it “present an unsettled question of general public importance.” In re Contract for Route 280, Section 7U Exit Project, 89 N.J. 1, 1 (1982). If the lower court’s decision “reflect[s] the application of established principles” of law “to an intensely factual situation,” certification is not warranted. Bandel v. Friedrich, 122 N.J. 235, 237 (1991); see also Fox v. Woodbridge Twp. Bd. of Educ., 98 N.J. 513, 516 (1985) (O’Hern, J., concurring) (finding certification not warranted when the lower court’s judgment “is essentially an application of settled principles to the facts of this case”). Likewise, though this Court reviews cases “in the interest of justice,” review is not warranted when the result “is not palpably wrong, unfair or unjust.” Mahony v. Danis, 95 N.J. 50, 52 (1983) (Handler, J., concurring). Finally, certification should not be granted where the decision below “does not present a conflict among judicial decisions that requires clarification or calls for this Court’s supervision.” In re Contract for Route 280, 89 N.J. at 2. This case satisfies none of the criteria for certification.

As they did below, Petitioners primarily argue that the TRC exceeded its authority and that the TRC cannot establish or alter pierhead lines by individual license. (Rba5-7). In their Petition, they attribute the Appellate Division’s

contrary conclusions to a misplaced reliance on Schultz v. Wilson, 44 N.J. Super. 591, 607 (App. Div. 1957) which concerned whether a tidelands grant from TRC's predecessor, the Council of the Division of Planning and Development's (CDPD), establishing the bulkhead and pierhead lines by the terms of the grant itself, was valid. Schultz found the line could "be established in the grant itself" based on a number of factors including CDPD's general authority to establish exterior lines, N.J.S.A. 12:3-17, and CDPD's historical practice of fixing those lines within "riparian deeds and the accompanying maps." (Pb7-8).

According to Petitioners, the panel erred in citing Schultz because that decision predated the repeal of N.J.S.A 12:3-17 in 1979 and current version of N.J.S.A. 12:3-13. (Pb7-10). That line of reasoning fails because the Appellate Division's conclusion that the TRC could establish pierhead lines by the terms of its tidelands licenses was not based on Schultz, any other case or the now-repealed N.J.S.A 12:3-17. It was firmly rooted in N.J.S.A. 12:3-13 which, if anything, expanded the more limited powers the TRC had under N.J.S.A 12:3-17. Indeed, when the Legislature repealed N.J.S.A 12:3-17 it concurrently expanded the scope of N.J.S.A. 12:3-13 enabling the TRC to "change, fix and establish" exterior lines not only in the "waters of the bay of New York or the Hudson River" as N.J.S.A. 12:3-17 once provided, but for the "tidewaters of the

State.” L. 1979, c. 311, § 2.

The other cases that Petitioners cites to suggest a certifiable question are inapt because, as the Appellate Division noted, Petitioner is not the State’s grantee but the State’s licensee and a licensee’s rights do not extend beyond the license box. Jibsail, slip. op. at 21-24. “The State is the proprietor of all lands under tidewater below high water mark and possesses all of the incidents of ownership, including the absolute discretion in making conveyances or granting licenses to its tidelands.” In re Tideland’s License 96-0114-T, 326 N.J. Super. 209, 212 (App. Div. 1999) (citing Atlantic City Elec. Co. v. Bardin, 145 N.J. Super. 438, 442-44 (App. Div. 1976)); Le Compte v. State, 65 N.J. 447, 450-51 (1974); Velsicol Chem. Corp. v. State, 182 N.J. Super. 575 (App. Div. 1982); Taylor v. Sullivan, 119 N.J. Super. 426, 430 (App. Div. 1972).

Petitioner’s suggestion that the pierhead line is jurisdictional fundamentally misunderstands the function and purpose of a pierhead line. (Pb12-16). There are multiple and overlapping sources that authorize the TRC to establish pierhead lines in the State’s waters. See N.J.S.A. 12:3-1 (Council shall fix and establish exterior lines beyond which no permanent structure shall be permitted...in the waters of the bay of New York and elsewhere in the State.”); N.J.S.A. 12:3-2 (exterior lines are herein fixed and established “except as said [exterior lines] have been or may hereafter be changed pursuant to

section 12:3-13 of this title); N.J.S.A. 12:3-13 (“[c]ouncil may change, fix and establish any other lines than those now fixed and established for pier lines...”); N.J.S.A. 12:3-20 (“Council shall, from time to time, fix and establish around and in front of all islands...in the tidewaters of this State, exterior lines beyond which no pier...or permanent obstruction of any kind . . . shall be made or maintained . . .”). The law on this issue is settled and requires no further review.

CONCLUSION

For the reasons stated herein, the Petition should be denied.

Respectfully submitted,

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